Women's Financial Rights

In the Light of the

Islamic Shariat

(The work is a modest attempt to study the financial rights of women as expressed by the Qur'an and Sunnah, the primary sources of the Law of Islam.)

By

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Published by

All India Muslim Personal Board

New Delhi-25

Name of the Urdu Title:
Khawateen ke Malee Huqooq
Shariat-e-Islami ki Roshni main

Auther:
Maulana Khalid Saifullah Rahmani

Name of the English version:
Women's Financial Rights …..

Published by:
All India Muslim Personal Law Board

Year of Publication:

Pages: XIV+92=106

Price:

All India Muslim Personal Law Board
Main Market Okhla Vill Jamia Nagar,
New Delhi-25 Tel: 011.26322991 Fax.26314784

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Foreword

by

Maualana S. Nizamuddin

Secretary General All India Muslim Personal Law Board

Praising Allah and sending blessings on His noble Messenger.

About the position of the Islamic *Shariat* on the financial rights of women voices are raised time and again from peoples of different backgrounds. Muslim law professionals urged more than once that there should be an academic work to explain the financial rights of women bestowed upon them by the law of Islam as it exists in the Holy Qur'an and the Sunnah, the only authentic explanation of the Qur'an, shedding light on the rationale behind giving her a the comparatively less share than man in the estate. I too cherished the idea of having a book on the topic which might satisfy the quest of the people.

For this work my choice fell upon dear Maulana Khalid Saifullah Rahmani, who has shot to enviably good fame in India and outside for his exceptional juristic insight and the rational explanation of the law of *shariat*. For long he is associated with the All India Muslim Personal Law Board as an eminent member of its Executive Committee, Legal Committee, Darul Qaza

Committee and the *Shariat* Understanding Committee. Ever since the sad demise of my venerable fellow H. Maulana Qazi Mujahidul Islam Qasmi (Ex president of the All India Muslim Personal Law Board) till today the Board has the honour to seek his active co-operation in juristic matters and academic projects. May Allah reward him best and grant him more and more opportunities of serving the religious knowledge.

It is gratifying for me that the Maulana has successfully prepared the present book on the financial rights of women in the scheme of the Shariat. The book has been written in the academic style with Dawah approach. Explaining the concerned teachings and textual expressions of the Qur'an and Sunnah, the author unveils the great wisdom and expediencies of those laws and invites the Muslims to bring all such perfect laws and teachings into their practice and fulfil the demands of the *shariat*. It is hoped that the booklet will be of immense benefit both for general people and the specialist alike and will dispel the doubts raised by the Western propagandists and their eastern disciples.

May Allah honour this effort with His acceptance

Sayyid Nizamuddin

General Secretary All India Muslim Personal Law Board

February 7, 2008

بِسۡمِ ٱللَّهِ ٱلرَّحۡمَٰنِ ٱلرَّحِيمِ

Author's Prefatorial Note

The All India Muslim Personal Law Board is so great a favour of Allah on the Indian Muslim community that Muslims living in Muslim countries enviously appreciate it. It indeed has become a symbol of unity of the Indian Muslim Community, uniting all the Muslims, their sects, organizations and groups under its banner, their secterian, religious and political affiliations notwithstanding.

The *raison d'etre* of the Board is guarding the Islamic Shariat. The move of guarding the *shariat* is actively working on three fronts: first, legal front, on the legal front the law cases, related to the Islamic shariat, are pursuid in the courts of law, and the abrogation of the counter-*shariat* laws is sought through pursuasive political efforts. Also endeavours are made to persuade the judicial mechanism of the land to implement on Muslims only the laws of the *shariat* as far as the secular law of the land permits.

Second, persuading the Muslims into adopting completely the laws and injunctions of the *shariat* and readily implent the law of Allah in their practical lives, reconstructing their social edifice along the guidelines and injunctions of the Islamic law. It is because of the indisputable fact

that the move to protect the *shariat* has no object other than bringing it to our practical life.

Third front is the understanding of the *shariat* by the Muslims and non-Muslim brotherhood, and the fact that the law of Islam is perfectly consistent with the law of nature and fulfills the dictates of reason and expediency. For the past few years last front has been the object of special focus and bearing desirable results.

About the financial rights of women, especially their share in the inheritance, often voices are raised from many people; there was a need to present the related rulings of the *shariat* in a separate book form. Keeping this in view, the Amir-e-Shariat Maulana Sayyid Nizamuddin (General Secretary of the Board) charged me with preparing a special booklet on the issue, thereby to restate the correct position of the Shariat, its position on women's financial rights in Islamic law and its expediences for the benefit of Muslims and the interested non-Muslim brothers. Hence the present bookelt.

As far as the structure of the booklet is concerned, I have divided it five chapters in the following order:

Chapter I discusses the women's financial rights with reference to inheritance, *hiba* (gift) and bequest, and the women's right to inheritance in varying conditions. In preparing this chapter, besides other books, I have heavily drawn upon an Arabic treatise *Mirathul Mar'ati wa Qazyatul*

Musawat authored by a learned Egyptian Dr. Salahuddin Sultan (Advisor Religious Affairs, Bahrain).

The focus point is that women's less share in the inheritance as compared to that of men is not based on the concept of the sexual differentiation as it is mistakenly held; it is based on the natural concept 'rights according to responsibilities'.

Chapter II revolves round the Islamic concept of the maintenance of women, an obligation on men towards their wives. Since the *shariat* law of inheritance and the law of maintenance are closely related, without having a proper understanding of the nature of relationship between inheritance and maintenance it will be almost impossible to grasp the rationale of the difference the *shariat* makes between the shares of men and women in inheritance.

Chapter III dicusses the concept of *mehr* (dower), importance of *mehr* in the marriage system of Islamic *shariat*. The chapter includes discussion on the quantum of the *mehr* and related injunctions according to the *shariat* viewpoint.

Chapter IV sheds light on the issue of women's right to work and earn a livelihood. The chapter seeks to express the commands and injunctions of the *shariat* as to what extent the shariat permits the women to earn money for

themselves. The focus point is that the responsibility of earning money to support the family is chiefly of the men. Arrangement of expenses and the outdoor job constitutes the responsibility of the men. Only the indoor home task is given to women. This division of tasks holds great good for women and is quite natural.

Chapter V is dedicated to discuss the position and stand of the *shariat* that women enjoy the fuller rights to utilize their properties and wealth according to their own discretion. The point gathers more importance when we come to know that some religions bestow on women right to ownership but do not leave her free to utilize or expend her wealth according to her discretion.

The preparation of the present work hardly took two or three days. I gratefully acknowledge the sincere co-operation of my students of the Department of Fiqh and Hadith at al-Ma'ahdul Ali al-Islami, Hyderabad. Without their active assistence it would have beeen very difficult for me to produce such a work within a duration so short. May Allah reward them best and honor this humble writing with His acceptacnce.

Khalid Saifullah Rahmani

Beitul Hamd, Shaheen Nagar, Hyderabad A.P. (INDIA)

February 10

بِسۡمِ ٱللَّهِ ٱلرَّحۡمَٰنِ ٱلرَّحِيمِ

Prologue

Women form a complete half of human beings. Indeed they constitute a refrain of the song of humanity. The natural duties bound to them by nature dictated that they be an embodiment of niceness, a combination of loveability and faithfulness, gracefulness and sweet heartedness emitting the fragrance of love on one hand and having the bashfulness and modesty to adorn their beauty and pride on the other. This distinctive feature of her being has lent her the attractiveness which invites love from men. Equally tragic is the fact that the physically weaker woman has been the victim of the man's oppression and exploitation ever since the inception of the human history. Sometimes, in the past she was sold and purchased and her modesty had been an object of bargining. Today's advanced age has altered the mode of woman trade. Today, her locks and cheeks have become a tool of trade publicity. Her denuded beauty is sold and bought publicly. In short, this nice class of human beings as was an object of man exploitation and his opperesive tactics so she stands today. In the past her humiliating treatment had other reasons but, unfortunately, this advanced age is subjecting her to humiliation under the banner of "woman freedom and advancement; her wretchedness is continuing as it had been in the past.

At the time of the Prophet Muhammad's advent two classes of human beings were wretched and oppressed in the extreme. They were of the slaves and women. Since the Holy Prophet (SAWS) is the *Mercy unto all Mankind,* he liberated these two oppressed and ill-treatd classes from the yoke of oppression and humiliation. He did not forget them even in his mortal illness; he enjoined the people to treat them with utmost kindness. More, the Holy Prophet (SAWS) gave a perfect law to humanity which, among other things, enshrines the women's special rights at all levels and stages. These rights as are related to all spheres of life, so cover the sphere of *mal* (property, belongings, money etc). The financial of women, as given by Islam to them, may be summarised in the following five points:

(1) Women's right to inheritance

(2) Women's maintenance and the men's financial obligations towards women;

(3) Women's right to dower (*meher*) and the concerned Islamic teachings;

(4) Women's right to work and benefit from different means of earning;

(5) Women's right to utilize their *mal* and properties according to their own discretion.

Next pages of the book are meant to fairly discuss all the above mentioned five points.

Chapter First

Inheritance, Gifting, Bequest and Women

Before the advent of Islam most religions and religious systems acknowledged no right of women to share the ancestral estate. The pagan Arabs held that the ancestral estate as whole was the lot of those male offspring of the deceased who might defend the clan against its enemies. To the Jewish law, whole of the estate was considered to be the right of the first offspring to the exclusion of all the late comers. The Hindus too did not acknowledge her right in the estate and the ancestral property, their claim to be in possession of the world's oldest religion and high cultural traditions notwithstanding. West, despite all its pretensions to knowledge and enlightenment, recognized no share of women in the estate till the mid of the nineteenth century.

Opposed to all such false religions and ingenuine systems of life, Islamic teachings, side by side men, declared their co-status women entitled to due shares in ancestral properties and estate. It gave the shares of mother, daughter, sister and wife in the manner it bestowed on father, son, brother and husband. Today women are generally regarded entitled to have a due share in the ancestral properties and estate. This in fact is an undeniable gift from Islam to the world.

There are three ways through which one can possess the money, property or belongings of

others without paying any thing to them: inheritance, gifting, and bequest.

First of all, we shall be discussing the Islamic law of inheritance with special reference to the women's share in it. What follows is a brief statement of women's share and its rationale as exists in the Islamic law of inheritance

The Law of Inheritance And Women

The relatives who have been put on priority to inherit the estate of the deceased in the scheme of the Islamic law of inheritance and who in no circumstances can be barred from receiving their due shares out of the estate, property, possessions left by the deceased are six in number, three men and three women. The men inheritors include father, son and husband. The three women inheritors are: mother, daughter and wife. Next to this category is the category of some other inheritors, termed by the Qur'an as: *Zawil Furuz*. That is, those heirs whose shares have been fixed by the Qur'an itself. (They may be termed as Qur'anic heirs, as do some contemporary books on the Islamic law.) This category is constituted by more women than men. To explain, there are only six conditions in which man is included in the Zawil-Furuz category and inherit his share as the Qur'anic heir. But woman is included in this important category under seventeen conditions. The illustration follows:

(a) Women recipients of two thirds of the estate:

Under the following four conditions women heirs shall receive the two-thirds of the total estate:

(1) If the deceased left two or more daughters.

(2) If the deceased left two or more grand-daughters but not the daughters.

(3) The deceased left two or more full-sisters.

(4) The deceased left two or more consanguine sisters.

(b) Recipients of the half of the estate

Under the following four conditions the women heir are entitled to receive the half of the total estate of the propositus:

(1) The deceased left only one daughter.

(2) The deceased left only one grand-daughter but not the daughter

(3) The deceased left only one full-sister

(4) The deceased left only one consanguine sister

(c) Recipients of one-third

Under the following two conditions the women heirs are entitled to receive a one-third of the total estate of the propositus:

(1) Mother of the deceased

(2) One uterine sister

(d) Recipients of the 1/6

The following five women heirs shall receive the 1/3 of the total estate of the deceased.

(1) Mother, (2) grandmother (in absence of mother) (3) grand daughter; (4) consanguine sister; and (5) uterine sister.

(e) Recipients of the 1/4

The following being the only condition of heirship under which the woman heir shall inherit the 1/4 . This condition is exclusive for the wife of the deceased who left no son or daughter at all.

(f) Recipient of the 1/8

This woman heir is again the wife who shall inherit the 1/8 of the total of her deceased husband's estate in case he left one or more children.

It will be interesting to note that among the fixed shares of the heirs the greatest being the two-third and then the half. Under no condition man can inherit the two-third estate of the deceased. The half can go only to the husband if the deceased wife left no children at all.

As far as the women's shares from the angle of quantum are concerned, there might be four conditions:

(1) When she receives the half share as compared to that of the man heir.

(2) When she inherits the share quite equal to that of her coequal man heir.

(3) When she is entitled to receive a share more in quantum than of the man heirs.

(4) When woman inherits to the exclusion of men.

It is not intended here to survey all the possible conditions of the type; only some of them are briefly put here.

Woman heir's half as compared to her coequal man heir

Under the following four conditions the woman heir will inherit the half share as compared to her coequal man heir.

(1) The deceased left one son and one daughter, e.g., if the deceased left one son and one daughter and his total estate for example is three lac (lac=100000/-) rupees, the son shall inherit two lacs and the daughter will receive one lac rupees.

(2) Mother with the father of the legator, on condition that there is no descendents, husband or wife. Under such a condition the mother of the deceased shall receive 1/3 while the father shall inherit the two-third as an agnate.

(3) Full or consanguine sister; if full sister or consanguine sister inherited the estate with full-brother or consanguine brother, the sister's share shall be single as compared to her brother's double share. To illustrate, if the deceased did not leave mother, father, children, husband or wife and left only full sister or consanguine sister, full brother or consanguine brother, the brother, whether full or consanguine, will inherit the two-third of the total estate of the deceased and the rest one-third will be the lot of the sister, whether full or consanguine.

(4) The husband shall receive the double share as compared to his wife. For example, if the deceased wife left no descendent her husband shall inherit the half of her estate; in case she left descendent(s), the husband shall inherit a one-fourth of the total estate. By contrast, the wife shall inherit the one-fourth of her deceased husband if he left no descendent: if there are descendent(s), the wife's share shall be the eighth portion of the total estate.

Women's share equal to that of men's

Following are the conditions under which the women shall inherit the portion of the estate equal to the share of their coequal men.

(1) If the deceased left mother, father and son, both the father and mother shall inherit the sixth portion of the total estate. Likewise, if the deceased is survived by mother, father and two daughters, both father and mother shall inherit the sixth portion of the total estate and the two-thirds shall be the lot of the daughters. In the same way, if the deceased woman is survived by her husband, father and mother and one daughter, the parents shall inherit the sixth portion of the estate.

(2) Uterine brother and sister shall inherit the estate on an equal footing. For example, if a woman left husband mother and a uterine brother, the latter shall inherit the sixth portion. In case there is a uterine sister besides the husband, and mother, the former shall receive the sixth portion. If, likewise, a woman is survived by her husband, mother, and a uterine sister and brother, the husband shall inherit the half of the estate, the sixth portion will go to mother and the sister and brother shall inherit the one-third on an equal footing.

(3) There might be other conditions of the kind. For example, if the deceased left only one heir, whether man or woman, he/she shall inherit the total estate. The

single heir may be a male relative like father, son, brother, husband, maternal or paternal uncle or from the female relatives like mother, daughter, sister, wife, maternal or paternal aunt. To exemplify, if one person is survived by a single son, he will inherit the total estate as an agnate heir. If he/she, likewise, is survived by a single daughter, she too will inherit the total estate half as her due share and the rest half as 'return'.

(4) There are conditions in which the full sister inherits the portion of the estate as equal to full brothers. To explain, if a woman is survived by her husband and one full brother, the total estate shall equally be divided into the husband and brother. Likewise, if a woman left her husband and a full sister, the estate will, again, be divided into two equal parts, one shall be the lot of the husband and the second half of her sister's. in case she left husband, brother and a daughter, the daughter shall inherit one half, the fourth will go to husband and the rest will be the lot of the brother. In case of full-sister in the stead of full brother, she too will inherit the rest. Interestingly, there might be conditions under which turns equal the share of a full brother and uterine and full sister. For example, if a woman is survived by

husband, mother, and uterine sister and full brother, the half of the total estate shall be the share of the husband, the sixth part will go to mother and the full brother and uterine sister shall equally inherit the two sixths, each one by brother and sister, notwithstanding the fact that the full brother is nearer to the deceased than the uterine sister.

It is not intended to survey all such possible conditions; there might be other conditions of the kind under which woman heir that of might be entitled to receive a greater share than her coequal man heir's.

Women get more than men

There are conditions under which the inheritance of women heirs may exceed that of men heirs. Few of such conditions follow:

(1) If a woman left husband, father, mother and two daughters and her estate, for example, is sixty lac rupees, the deceased's daughters shall inherit thirty two lacs, sixteen lacs each. If the deceased left husband, father, mother and two sons in the stead of daughters the sons shall inherit twenty five lacs rupees, 12.50 lacks each, thus the share of the sons is far too little than that of the daughters. Take one more example if the deceased is survived by husband, mother and full sisters and

the estate, for instance, is forty eight lacs rupees, the sisters will inherit twenty four lacs rupees, that is twelve lac rupees each. In case there are full-brothers in place of full sisters, their share will be only sixteen lac rupees, eight lac rupees for each. Under such conditions the share of women heirs exceeds by two thirds as against the men's, which they receive as agnate heirs.

(2) There are conditions under which the woman heir inherits the half of the estate as her fixed share, while the man heir of equal status inherits less as compared to hers. For example, if the deceased left the husband, father, mother and one daughter and the estate, for example, is one hundred and fifty six lac rupees, the daughter shall be entitled to seventy two lac rupees. By contrast, if there is son in place of daughter, his lot shall be only sixty five lac rupees,. Even more interestingly, sometimes this difference becomes even greater. To illustrate, if the deceased is survived by the husband, mother and a full sister, and the estate for example, is forty eight lac rupees, the full sister's share shall be eighteen lac rupees; but

the full brother, in the stead of the full sister will inherit only eight lac rupees.

(3) Sometimes women's fixed one-third share may exceed of her coequal male heir's. for example, the deceased is survived by wife, mother, two full-brothers and two uterine sisters and the estate, for example, is forty eight lac rupees, the uterine sisters will inherit sixteen lac rupees, that is, eight lac rupees will go to each sister, while the full brothers will receive only twelve lacs, that is six lacs each. Similarly, if a woman is survived by the husband, two uterine sisters and two full brothers and the estate, for example, is sixty lac rupees, the uterine sisters shall receive twenty lac rupees, while the full brothers shall inherit only ten lac rupees, that is, each five lacs.

(4) There are conditions in which the woman heir's fixed share is 1/6 but it sometime exceeds that of her coequal men's. To exemplify, the uterine sister's fixed share is the sixth portion. If the deceased left the husband, mother, one uterine sister and two full brothers and the estate, for example, is sixty lac rupees the sister shall receive ten lac rupees and the full-brothers will equally share ten lac rupees, each

one having five lacs. There might be other conditions of the kind as well.

Conditions when only woman inherits

There are conditions under which only the woman heir inherits. For example, if the deceased left the husband, father, mother, daughter and granddaughter, the granddaughter shall inherit the 1/6. In case of grand-son in place of granddaughter, the grandson will inherit nothing. Likewise, the deceased left the husband, full sister and consanguine sister, the latter is entitled to receive the 1/6; but the consanguine brother, in the absence of the sister will be entitled to nothing. There are more conditions in which the women heirs inherit but the men heir do not.

When women heirs inherit less than men heirs and why?

The simple fact of the Islamic law of inheritance that from among the Qur'anic heirs, that is, those who in no case can be denied from their share in the estate of the deceased, the male ones inherit the double portion of the estate as against their women coequals can not be denied. The Qur'anic heirs include father, mother, son, daughter, husband, and wife. It would be an entirely mistaken view to think that the roots of this difference lie in the gender-based difference. This, rather, is based on the natural principle, 'rights according to responsibilities'. The magnitude of responsibilities is the primary factor to determine the real position of rights one

should have. According to this natural rule the persons bearing less responsibilities in the human social structure will be required content themselves with less rights; and, on the other hand, the greater responsibilities will make the bearer entitled to greater rights. The same principle has been expressed by the Holy Prophet (SAWS) in the following words:

الخراج بالضمان [1]

The purport of this Prophetic expression is that the bearer of the loss shall be entitled to secure the benefits and advantages involved. Judged the financial responsibilities of men and women from this angle, it will become abundantly clear that men's financial liabilities far outweigh the women's. Man not just is responsible for his own expenses, he is liable to provide maintenance for his wife, children, and bear the expenses of their upbringing, education and marriage. He will have to arrange for the fostering of his infant baby if his wife is not prepared to suckle the baby either because of her illness or due to any other reason. It is again the man who, in most cases, is liable to look after his older parents, orphan and unmarried brothers, sisters and widow or divorced sisters. In the event of decease of the son he may have to look after his underage grand-children. In short, in the law of Islam almost all the financial

[1] Abu dawood, Book of Ijara, Hadith No. 3508, also Tirmizi on the authority of Ayisha, Hadith No. 1285

responsibilities are attached to men and only men. As regards women, they have to bear no financial responsibility. They are not asked even to meet their own expenses. Husband is liable to bear the maintenance of his wife even if the wife is affluent and the husband indigent. Indeed the magnitude of man's financial liabilities require even more difference between the shares of men and women heirs, yet, considering the natural and structural weakness of women, the Islamic law has treated them more fairly than they actually deserved.

The rationale of differentiation between the shares of men and women in the estate of the deceased can better be understood observing the following point. The office of the parents in Islam has been held in high veneration; their greatness and importance far outweigh the importance of the descendents. This demands that the parents should have a greater portion of their deceased son's estate than his own descendents. But, contrariwise, the share of the descendents is far too greater than that of the parents. It is in consideration to the fact that while the parents have lived their life and discharged their duties, the descendents are just to enter the challenging field of life where they have to play a long innings of responsibilities.

To cut the long story short, the Islamic law of inheritance is deeply related to the law of maintenance of the dependents. Greater magnitude of responsibilities will entile the

bearer to enjoy greater share from the estate; and the lesser responsibilities will naturally fetch less share. This is a principle based on natural justice and wisdom and no man of sane can dare deny its justness and well-balancedness

The sin of denying the heirs of their due shares

Today the problem we are facing is not related to the quantum of the estate; it is basically related to the common phenomenon of denying the women of their due shares determined by Allah Himself in the Qur'an. The importance of the law of inheritance has been described in the Divine Scripture as:

آباءكم و أبناءكم لا تدرون أيهم أقرب لكم�فعا ، فريضة�ن الله إن الله كان عليماً حكيماً .

You don't know whether your parents or your children are nearest to your in benefit, these are settled portions ordained by Allah. And Allah is All-knowing, All-Wise.[1]

تلك حدود الله ، و�ن يطع الله و رسوله يدخله جنات تجري�ن تحتها الأ�هار خالدين فيها وذلك الفوز العظيم . و�ن يعص الله و رسوله و يتعد حدوده ُيدخله�ارا خالدا فيها وله عذاب�هين .

"These are limits set by Allah: so, those who obey Allah and His Messenger shall be admitted to Gardens with rivers flowing beneath, where they will stay for ever; and that will be the supreme success." [2]

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[1] Al-Qur'an, 4:11

[2] Al-Qur'an 4: 13-14

And those who disobey Allah and His Messenger and transgress His limits shall be admitted to Fire to stay therein for ever, and they shall have a humiliating punishment."

The verse No. 11 speaks of, among other things, the fact that whatever the women heirs inherit from the estate of the deceased is not a gift from their male relatives; it is their own share determined by Allah Himself. Subjecting it to any kind of unfair change will amount to tampering with the Divine Rights. Could there be a transgression greater than this?

Sadly enough, there are numerous Muslim households where no portion of the estate is given to women heirs. As soon as the inheritor dies, the sons and the male heirs take the possession of whole the estate. Neither sisters are given their do shares nor the mother or the brother's widow are given their rights from the estate of Heir, deceased husbands. Even the mehr is not paid to the widow, despite the fact that the *mehr* too is debt like all other debts the deceased owed; and, first of al, the debts, including *mehr*, are required to be paid as early as possible after the decease of the inheritor. Such acts do constitute gross injustices. If the estate of the deceased is captured by his sons without giving the due shares of the widow mother and sisters, the sons will be inheriting an estate with the a portion of *haram* in it and this not just is feared to jeopardize their success in the after death life, it is feared to affect whole of their life and activities in

the worst manner. Many *ahadith* suggest that eating the *haram* is a curse, which renders all the worships and prayers unacceptable and unrewarding. Every Muslim household, therefore, is better advised to give the women heirs their fixed shares in the deceased's estate.

Hiba **(gifting)**

Besides the inheritance, there are two more ways by which one can own the ownership of another person's *mal* (property (moveable or immoveable) or anything else without offering any thing in exchange to the first party. They are *hiba* (gifting) and *wasiyyat* (bequest). As far as the *hiba* is concerned it is immediate transferring of one's ownership to another person in the life of the gifter. As the men are able to do an act of *hiba*, so are the women too. The second party too might be either men or women. It is advisable for the gifter not to gift his/her total property; it may expose him/her to difficulties in the future besides harming the heirs. Still the law puts no limit on the quantum of the gift nor limits the freedom of the gifter; and if a person gifted the total of his/her property, the *hiba* shall be effective. In case of gifting something to a *mehram* relative, the gifter cannot revoke his/her *hiba*, i.e., he/she cannot take it back. The ruling is equally applicable to both male and female relatives. Likewise, if the husband (or wife) gifted something to his wife (or the wife gifted something to her husband), the gifter cannot

revoke his/her gift. As regards the benefits associated with gift (*hiba*), both men and women have equal rights to benefit from gifted item. However, there exists an especial aspect of advantage for the daughter(s) of the gifter. That is, if somebody wants to gift something to his children in his life, the gifter, according to Imam Abu Hanifa, Imam Muhammad, Imam Malik, Imam Shafie, etc, shall be required to maintain complete equality between his male and female children. He should give his daughters as much as he is giving to his sons, without making difference between them as applicable in the law of inheritance.

Bequest (*Wasiyyat*)

The third way of transferring the ownership of something to another person without taking anything in exchange is *wasiyyat*. As an Islamic legal term, *wasiyyat* means transferring one's ownership of something in favour of another person after one's death. Regarding the *wasiyyat* two important rules worth considering: first, no *wasiyyat* shall be regarded valid in favour of the heirs. The Holy Prophet (SAWS) is reported to have said:

لاوصية لوارثٍ

"No bequest is valid in the favour of an heir".[1]

[1] Abu Dawud, Hadith No. 287 Tirmidhi Hadith No. 22120

Second, the bequest must not exceed one-third of the legator's property. The permission of making a bequest is subject to these two legal restrictions.[1]

Like inheritance and *hiba*, the *wasiyyat* too can be made by man or woman; and in favour of man and woman alike. Generally, doing *wassiyat* is lawful. But it gets the status of a recommendatory act in favour of grand-children in the event of death of son or daughter in the life of the legator. In case the grand-father is unaware of the share at ruling vis-à-vis the law of bequest, the men of Islamic learning, the people of social standing and other relatives should convey to him the knowledge and position of the *shariat* in this regard, thereby to guard the best interests of the orphan grand-children by *wasiyyat* in the estate of their grandfather.

[1] Bukhari, Chap. Wasiyyat, Hadith No. 2744

Chapter two

Maintenance of women and provision of essentials of living for them

Basically, the Islamic *shariat* holds the men responsible for the maintenance of women. It is a natural off shot of his being the *Qawwam* of the family. To quote the Qur'an:

الرجال قوا□ون علي النساء بما فضل الله بعضهم على بعض و بما □أفقوا□ن □أ□والهم .

Men are the protectors and maintainers of women, because Allah has granted the one more (strength) than the other, and because they spend on them from their means."[1]

The *Shariat* has associated special importance to women relatives. According to the *shariat* rule if a man and a woman of equal status, entitled to receive the maintenance, the woman relative will enjoy a degree of preference to man relative in receiving the maintenance. To illustrate the point, the father is normally liable to pay the maintenance of the sons and look after his male children until they come of an age; after the sons reach the age of adulthood the father's liability of maintenance will cease, except that the son is disabled. But, by contrast, the daughter's maintenance remains incumbent upon the father until she gets married and goes to her husband. If, likewise, a person has the capacity only to look

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[1] Al-Qur'an 4: 34

after his father or mother, the mother shall stand first in the order of preference.

What the *nafaqa* (maintenance) stands for?

So far as the maintenance of women is concerned, two important points worth consideration, first, what are the things the term maintenance does include, the second, which women's maintenance is obligatory for man?

The *nafaqa* basically includes the following five things:

(1) fooding, (2) clothing, (3) treatment, (4) provision of a servant, (5) residence.

Brief description of each item follows:

Food

Since the taste, temperament, and the bodily need differ from person to person, the items of food cannot be determined in terms of quantum and standard. According to the law of the *shariat* the man shall be required to provide his wife with acceptably proper food. To substantiate this ruling from a very noteworthy juristic authority:

قال أصحابنا : " وهي (النفقة) غير□قدرة بنفسها بل بالكفاية ... ، وإذا كان وجوبها على سبيل الكفاية ، فيجب على الزوج□ن النفقة قدر□ا يكفيها□ن الطعام و الإدام و الدهن ، لأن الخبز لا يؤكل عادة إلا□ا دو□اً ، والدهن لا بد□نه للنساء ، ولا تقدر□فقتها بالدراهم و الد□ا□ير على أي سعر كا□ت ، لأن فيه إضراراً بأحد الزوجين إذا السعر قد يغلو وقد يرخص ، بل تقدر لها على حسب اختلاف الأسعار غلاء و رخصاً ، رعايةً للجا□بين .

"Our Ulama (the Hanafi jurists) have said that *nafaqa* (maintenance) cannot be fixed in terms of quantum; the maintenance should be paid in a quantum sufficient enough to cover her need of food. The sufficient quantum includes the food, curry and oil which may suffice her. Curry constitutes an essential part of food as the bread cannot be eaten up without curry. Oil is also required for women. The quantum of the maintenance cannot be fixed in terms of *dirhams* and *dinars* (or currency notes); it is bound to harm either one party of them as the prices are subject to souring and downing. Still, if it has to be fixed in terms of market currency, the fixation shall have to be done keeping in view the market prices, thereby guarding the interests of both the parties."[1]

Regarding the food it has to be noted that it should be according to climatic conditions and vary accordingly. **لا بد في وجوب النفقة على الزوج□ن اعتبار حال بلده** In case the wife falls ill, the arrangement of dietary food and likewise, the provision of supplementary items during her days of baby-feeding shall be the duty of the husband.[2]

Another considerable point regarding food is that the human beings could invariably eat and digest only the cooked items. That was why the *fuqaha* wrote that the arrangement of food

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[1] Badaius Sanai 3/429-30

[2] al-Kharshi 4/184-85

essentially means the cooked food as expresses the following citation:

فعليه أن يأتيها بطعام مهيأ

"He shall be required to arrange the cooked food for her."[1]

In case it is difficult for the husband to arrange the cooked food he, then, shall have to provide the raw materials and the services of a cook.[2]

However, the arrangement of cook is never an essential requirement; it basically depends on the social usage, tradition, social environment and the capacity of the husband. Under such a social environment where the women themselves cook food for themselves, for their children and their husbands and doing so constitutes the part of their domestic responsibilities, it would suffice for the husband to make arrangement of the uncooked material and other things essentially required for cooking, as the Holy Prophet (SAWS) divided the duties of Ali and Fatima (may Allah be pleased with them) after their marriage. According to this division the outdoor work fell to the lot of Ali and the indoor job and domestic work was assigned to H. Fatima. In India, and also in other eastern countries the general tradition goes that the indoor work and domestic job is associated with the women's commoner responsibilities and they do it on their

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[1] Radul Muhtar 5/290

[2] Raddul Muhtar, 5/290

own. This apart, in times of need it may turn a duty on the maintainer to make arrangement of cooked food for those women who, due to illness or similar other reasons, are not able to cook food. This might be the case of the too aged mother, disabled wife, or other women maintainee. For the maintainer it would be quite improper to force disafled wife old age mother prepare food for themselves. This would be a sort of brazen misbehaviour and disrespect towards them, amounting to fleeing from the legal responsibilities one owes to one's women relatives.

A yet another notable aspect of the provision of food is that the arrangement of the cooked food depends on the capacity and affordability of the husband. If he can afford only the arrangement of the raw material and the wife is capable of cooking and preparing the food, the law shall not force him to provide prepared food for the wife (or other women maintainees). Allah *ta'ala* has clearly established it beyond doubt that the arrangement of the maintenance is subject to the financial state and economic conditions of the maintainer. To quote the words of the Qur'an:

لينفق ذو سعة من سعته ومن قُدِر عليه رزقه فلينفق مما آتاه الله .

Let the man of means spend according to his means: and the man whose resources are limited, let him spend according to what Allah has given him. (65:7)

In providing food to the women under maintainees the man should consider his own standard of living and eating. If the maintainer and the maintainees are of the same class and standard, the maintenanee should be provided accordingly. If there is a disparity between the living standards of the husband and wife, and the man is of higher standard, he should meet the expenses of his wife according to his own standard. It will be quite improper for an affluent husband, as the jurists have specifically put it, to provide sub-standard food to his wife of poorer familial background.[1]

The matter of quantum and standard of the maintenance holds little importance if the maintainer man and the maintainee women are living at the same place and the food is prepared by them. This moral principle acquires great importance if the man is staying anywhere else and sends the expenses of the women (wife, mother, sister, etc.) from there. In such a case it is strongly recommended that he meet their expenses according to his financial means: it would be quite improper for an affluent man to send a meager amount for their expenses and regard himself absolved of responsibilities towards the dependent women.

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[1] See, for instance, Badaius Sanai 3/431, al-bayan of Yahya b. Abul Khair Yamani Shafie. (d. 558H) and al-Mutamad 2/322 of Abdul Qadir bin Umar Shibani of the Hambalites.

Notably, the provision of food as includes the raw materials of food, so it includes the cooking facilities and the means and the instruments involved. It will include the modern means and instrument in general vogue if the man can easily afford them. Such means may include the gas stove, refrigerator and other modern equipments because of that all such things are considered the essential requirements of the modern cooking system.

ويجب عليه آلة الطحن و خبز و□آية شراب و طبخ ككوز و جرة و قدر و□غرفة ، و كذا سائر أدوات البيت كحصير و لبد و طنفسة.[1]

Clothing

Like food the clothing is from among the basic necessities of life. The clothing covers the body, guard it against the environmental rough and tough changes; it is an article of beauty for human beings as well. To quote the Holy Quran:

خذوا زينتكم عند كل□سجد .

"Wear your beautiful apparel at every time and place of prayer.[2]

The clothing the man is bound to provide it to his wife ought to meet all these three requirements; it should cover the coverable parts of the body, be consistent with the climatic changes; and meet should the requirements of the concept of beauty of the age as the concept of

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[1] Durre Mukhtar with Shami 5/231, al-Hindiyah 1/548 al-Jauharatun Nayyirah 2/144

[2] The Qur'an7:31

beauty and ornamentation is subject to change from age to age. Besides the above mentioned, the clothing should be in quantum sufficing for her needs of wearing, changing and cleaning round the year. To substantiate it from a juristic authority:

ويجب عليه ن الكسوة في كل سنة رتين صيفية و شتوية ، لأ ها تحتاج إلى الطعام و الشراب و تحتاج إلى اللباس لستر العورة و لدفع الحر والبرد ، و يختلف ذلك باليسر و الإعسار والشتاء و الصيف .

The husband shall have to provide clothing to his wife twice a year, for summer and winter separately. As she needs food and drink, so she needs the clothing to cover her coverables, to guard herself against the heat and cold. This may differ according to the economic conditions of the husband and the climatic changes.[1]

As the man's standard of living plays a role in defining the value and nature of the food of his wife, so being the case of the clothing. Food and clothing should suit the man's own living standard and his economic conditions. For the man it would be improper to wear good clothing but provide a cheaper and inferior wear for the women under his care and maintenance. About the slaves the Holy Prophet (SAWS) has enjoined upon the people of Faith to maintain equality with themselves. "Feed them whatever you eat and clothe them what you wear".[2]

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[1] Badaius Sanai 3/430

[2] Sunnane Tirmizi, Had. 1945

If the slaves are to he treated at par with their lords and masters in matters of fooding and clothing, the ruling shall include the wife and women maintainee on a preferential basis.

A yet another considerable point is that the *Shariat* grants more latitude to women than men to adopt such measures which may enhance their beauty. Wearing silk is declared outlawed for men, but not for the women. Use of gold and golden ornaments is not allowed for men, but women can use gold and silver to enhance their beauty. Men are allowed to wear a silver ring weighing not more than 4 grams. Men are prohibited to wear a saffron-coloured piece of clothing, but no such restriction is put to the wearing of women. [1]

Such injunctions of the *Shariat* are suggestive of that the consideration of beauty in the clothing of the women should not be ignored. Throughout the world no Muslim household can claim to be more God-fearing and abstinent than the Holy Prophet's household. Still, the Prophet's beloved wife, Ayisha, possessed pieces of clothing so precious and beautiful that other people would ask them for preparing their brides on occasions of their wedding. Since the women are naturally given to adorn themselves more and more; and the *shariat* too has duly considered this aspect in inacting its laws related to the adoption

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[1] Abu Dawud, on the authority of Barida, Hadith No. 4223, Bukhari, Hadith No. 5828, also Muslim, Hadith No. 2077

of measures intended to enhance their beauty, this consideration must not elude the provision of clothing to women. To refer to this important aspect the Holy Qur'an has employed the word *maroof,* a very comprehensive term. To quote the verse concerned:

و على المولود له رزقهن و كسوتهن بالمعروف .

" And the father shall bear the cost of their food and clothing on equitable terms."

Here the term *maroof* refers to the custom and usage of a society, regarding the fooding and clothing standards. The *fuqaha* too have repeatedly said that the fooding and clothing of the women, which the men have to provide to their espouses should conform to the standards maintained by a society. Explaining the *urf* prevalent in their own age, some *fuqaha* wrote that the clothing of women includes the pair of *kurta* and *shalwar* plus an outer garment and a longer, covering *burqa* in summer. In winter the woolen clothing too shall have to be provided for her by the man.[1]

Similarly, the clothing includes other things and articles which the women require for the maintenance of their beauty and to decorate themselves within the limits of the *shariat*. Such articles include the comb, oil, aromatic fluids and the likes, harmonizing with the age of the maintainee women. Allama Karshi al-Maliki adds

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[1] Badaius Sanai 3/431

the antimony, oil and henna to the contents of the term 'clothing'. To quote his words:

و زينة تستضر بتركها ككحل و الدهن□عتادَين و حناء .

"… the items of beauty include those things whose abandonment might be harmful to her, like the usual antimony and oil and henna."[1]

Treatment of the sick women maintainees

From among the basic necessities of the human beings is the treatment of their illness. Generally the *fuqaha* don't include the medical treatment of the sick wife in the *nafaqa* (maintenance) and the husband, according to traditional juristic viewpoint, is not held obligated to provide medical treatment to his sick life-partner. To quote Ibne Abideen Shami, a Hanafi jurisprudent of note:

" ... كما لا يلز□ه□داواتها ، أي إتيا□ه لها بدواء المر □ ، ولا أجرة الطبيب ".

"… Similarly, the husband is not obligated to provide her the medical treatment, that is arrangement of medicines for her illness (es), or making the payment of the charges of the physician."[2]

To the same opinion have subscribed Allama Dardeer, a notable Maliki Jurist, Imam Nawavi, a great jurist of the shafie school; and

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[1] al-Kharshi 4/186

[2] Raddul Muhtar 5/285 Book of Talaq chap. Maintenance

Ibne Qudama and Sharfuddin Musa of the Hambali School.[1]

Dr. Wahba Zubairli, a jurist of note of our age, too, has clearly expressed that all the four great founders of the schools of Islamic jurisprudence are unanimously agreed upon the point.

However, there exists no such expression in the Qur'an or the Sunnah as to suggest the non-inclusion of the treatment expenses in the maintenance. Perhaps it is because of the fact that in the part the treatment of diseases was not so much expensive, complicated and medically developed as it stands today. Most illnesses, then, were treated with preventives measures and herbs. People possessed very good physical ability to bear hardships. Living a pollution free life under the natural environment, they had a very high immunity to repel the invasion of illnessess and diseases. But now the things have totally changed. Living a mechanical life, and accustomed to artificial comforts, people have considerably lost their immunity and physical strength. Adoption of the measures to overgrow the food stuff, environmental and water pollutions and unhygienic living conditions have given rise to many complicated and hitherto unheard illnesses and diseases. Under such circumstances it will be grave injustice to provide

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[1] al-Shahul Saghir, 2/732, Rozatu Talibeen, 9/50, al-Iqna 5/984, al Muqni with al-Sharhul Kabir 24/301

food and clothing for them but deny them the medical treatment.

The proposition needs reconsideration. First of all we shall be required to determine the meaning and purport of the term *nafaqa.* Defining the *nafaqa* the *fuqaha* include in it all such things on which depends the human life. To quote a notable jurist's definition of the *nafaqa* here:

"□ا يتوقف عليه بقاء شيء□ن□حو□أكول و□لبوس و سكنى " .

"On which depends the existence of a living thing, like food, clothing and stay place."[1]

Allama Shami, too, has defined the *nafaqa* by using even more terse words:

"الإدرار علي شيء بما فيه بقاءه . "

"Providing something or somebody with the things on which depends its/his existence.[2]

It is an undeniable fact that in saving the human life against perishing the role and importance of medical treatment is by no way less than that of food and clothing; even sometimes the need to medical care and treatment may surpass the need to food and clothing. If this being a fact, than it have to be included in the meaning and definition of the *nafaqa*, and as the men are asked to provide food and clothing to their wives so they should be charged to pay for the medical are and treatment if their wives ever fall sick and attract a disease.

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[1] Majmaul Anhur 1/484

[2] Raddul Muhtar 1/275-77

Rather, the provision of the medical care to a sick wife ought to be put on top priority. In this regard the following lines of Dr. Wahba Zuhaili hold great import and invite serious consideration:

" ويظهر لدي أن المداواة لم تكن في الماضي حاجة أساسية ، فلا يحتاج الإنسان غالبا إلى العلاج ، لأنه ينتظم قواعد الصحة و الوقاية ، فاجتهاد الفقهاء مبني على عرف قائم في عصرهم ، أما الآن فقد أصبحت الحاجة إلى العلاج كالحاجة إلى الطعام و الغذاء ، بل أهم ، لأن المريض يفضل غالباً ما يتداوى به على كل شيء ، و هل يمكنه تناول الطعام وهو يشكو و يتوجع من الآلام و الأوجاع التي تبرح به و تُجهده و تهدده بالموت ."

It appears to me that the treatment in the past was not a basic necessity of human life. Generally the human beings did not stand in need to receive treatment as they abided by the natural rules for good health and observed the principles of hygiene. Therefore, the ruling of the past *fuqaha* is chiefly based on the general conditions of their ages. But now things stand completely changed. Now the need of treatment has turned out to be as much important as of the food, and sometimes even more important. The sick, for the most part, holds dearer his medicines than every thing else. Simply, can a sick person take food while he is suffering unbearable pain sticking to him, causing extreme trouble for him and challenging his life and taking him nearer to death?[1]

What strengthens our point more is that there exist complete unanimity among the fuqaha

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[1] al-Fiqhul Islami wa Adillatulhu 7/794

of all the four great schools of Islamic jurisprudence on the point that the man is obligated by law to provide medical treatment to his sick children. If this being so, which juristic principle precludes us from including the treatment in the meaning of *nafaqa* of wife? She is entitled to be provided with medical treatment even more obviously as she is the only source and means of having the children; and detained due to her attachment with her husband, she is completely unable to earn a livelihood for herself and make arrangement for her treatment. The case of children is not so; they are independent and may earn a livelihood for themselves to meet their need to medical treatment.

Arrangement of servant (s)

For the completion of many of his needs man stand in earnest need to someone else's assistance and aid. In this perspective the *fuqaha* generally discuss the arrangement of a servant under the details of the *nafaqa* of woman on man. However, if a person is not in such a position as to arrange a servant for his wife (or other women maintainees), or the wife or he himself is prepared to do all such works which need a servant like purchasing the items of daily use, arrangement of water and fuel, etc, the man shall not be obligated to provide a servant for her. But if her is capacious enough to provide a household job assistant for his wife, he shall be asked to do so.

The *fuqaha* are not unanimous on the point whether one on two aides shall have to be arranged by the husband. According to Imam Abu Yusuf two servants shall be required: one to assist her in doing the in-house job and another to do the out-door job. But according to Imam Abu Hanifa and Imam Muhammad the husband shall have to arrange only one aide to assist in doing the indoor and outdoor job.

"ولا يجب عليه لأكثر من خادم واحد في قول أبي حنيفة و محمد ، وعند أبي يوسف يجب لخادمين ولا يجب أكثر من ذلك . "

"The man is not obligated to make arrangement of more than one servant according to Imam Abu Hanifa and Imam Muhammad. To Imam Abu Yusuf, however, he shall have to provide two servants and not more than two."[1]

Imam Shafie, too, subscribes to the view of Abu Hanifa and Muhammad. To cite a reference here:

"فإنه لا يلزمه إلا خادم واحد " .

"The man is obliged only to provide one servant."[2]

besides the Hanafis and the Shafies, the Malikis too share the same view, as show the following words:

وقضى لها بخادمها إن أحبت الخ " .

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[1] Badaius Sanai: 3/430

[2] al-Bayan 11/211

"He will have to arrange a servant for her if she so likes." [3]

Important Note

Generally, the *fiqhi* literature discusses the need of the servant under the maintenance of wife. It is so because the maintenance of wife has been dealt with more than elaboration. It will be a mistaken view to regard the need of servant as applicable only to the wife; the ruling is undeniably applicable to other women as well. Will not the son be obliged to arrange a servant for his aged and feebled mother? Who will look after the small children whose mother has died other than the domestic help? A widow sister suffering from extreme disability, having none to look after her shall undeniably fall under the maintenance of her brother who will be obliged to arrange a help for her?

The arrangement of the servant and the domestic help is actually associated with the need of the maintainee women, social conditions and the economic status of the man. That was why the *fuqaha* declared it obligatory for the husband to provide a domestic help to a sick and unhealthy wife. To quote Shami here:

" وإذا□رضت وجب عليه إخدا□ها ، ولو كا□ت أ□ة ، و به صرح الشافعي و هو□قتضى قواعد□ذهبنا ."

"When she falls ill, the husband shall be obliged to arrange a servant for her even if sick

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[3] al-Kharshi 4/184

woman is his handmaid and not wife. The Shafies too have expressly said the same and so dictate our juristic principles."[1]

Residence

From among the necessities covered by the term *nafaqa* (maintenance) one is the provision of residence. The Holy Qur'an says:

" أسكنوهن□ن حيث سكنتم□ن وُجدكم " .

"Let the women live in the same style as you live, according to your means."[2]

About what kind of residence the wife has to be provided the Egyptian scholar Ibne Nujaim has written the following:

"□ما تجب بالتبوأة و السكنى في بيت خال عن أهله و أهلها و لهم النظر و الكلام□عها ."[3]

"The husband will be required to provide her with a residence empty from his (the husband's) people and from her (the wife's) people. They, however, will be allowed to see her and talk to her (subject to the *shariat* law).

The citation put above explains the following three important points:

1- The provision of the residence for the wife is the liability of the husband; it is because of that fact that residence is from

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[1] Raddul Muhtar 3/588

[2] Al-Qur'an 65:5.

[3] Kanzul-Daqaiq with commentary al-Bahrur-Raiq vol. 4, p. 326

among the basic necessities of the human beings. The residence, however, might be personal or rented one, according to the means of the husband.

2- The residence must be of the nature as to facilitate *purdah* for her and where she can feel secure of her honour and belongings.

3- The husband can not force her to live with his people. She also can not demand her husband to provide her a residence with her own people and relatives. This ruling is particularly applicable to the residence of the wife; because, psychologically speaking, most women feel not very good towards their in-laws.

Kind of residence

We face here a question: what kind of residence the husband has to provide to his wife? There could be three kinds of residence, as per the following detail:

(1) that the wife be provided with a separate room to live in with common basic facilities, i.e., latrine, bathroom, kitchen, etc. about such kind of residence there is a unanimous agreement amongst the *fuqaha* (Muslim jurists) that the wife can not be forced to accept it. To quote here an authority:

" قوله : " خال عن أهله و أهلها الخ " لأ□ها تتضرر بمشاركة غيرها فيه ، لأ□ها لا تأ□ن على□تاعها ، ويمنعها ذلك□ن المباشرة □ع زوجها و□ن الاستمتاع ، إلا أن تختار ذلك ."

"……It is because of that the sharing of the house with others)often) causes inconvenience to her; she feels insecure about her items; it also precludes her to contact with her husband and making use of her belongings in a proper manner. She can be provided with such a residence only when she feels pleased with such an arrangement."[1]

(2) A separate room with attached basic facilities in a larger house in a way that she might lock her residence. To some *fuqaha* such an arrangement is considered to be sufficient. To quote another authority:

(و بيت□نفرد) أي□ا يبات فيه ، وهو□حل□نفرد□عين الخ .

"….. the separate, residence has been defined to be the one where one stays at night. It should be a place separate and exclusive."[2]

To some *fuqaha*, contrariwise the wife must be provided with a completely separate house, as it is clear from the following quotation:

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[1] Raddul Muhtar vol. 5 p. 320 print. Zakaria Book Depot, Deoband.

[2] Durre Mukhtar with Shami vol. 5 p. 256 Beirut

"يشترط أن لا يكون في الدار أحد□ن أحماء الزوج يؤذيها ."

(3) “The residence must not be shared by any one else from the wife’s in-laws which might cause inconvenience to her.”

As a matter of fact, the kind of residence the wife has to be provided totally depends on the financial condition of the husband, his economic capacity and the condition of his wife’s relations with her in-laws. All such factors will determine the nature of the residence she has to be provided for.

Besides the security perception, equally important is that the house should have good neighborhood as the neighborhood plays a very considerable role in the security and safety of man, his property, honour, his temperament and morality. To quote a jurist authority:

" و يأ□ره بإسكا□ها بين جيران صالحين بحيث لا تستوحش ."

“The man is required to provide her with a residence located in the midst of the virtuous neighbour where she might feel safe from strangeness”[1]

Man naturally needs companionship of sincere friends and consoler. If the woman is without children and her husband often remains outdoors for earning a livelihood for his family, she then will have no option other than staying alone indoors, such a situation may put her at

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[1] Durre Mukhtar with raddul Muhtaar vol. 5 p. 257

great difficulty. To avoid such an inconvenient situation the husband shall be required to arrange a woman for her who might remove her strangeness.[1]

As far as the standard of the residence is concerned, it is, as we have just put it, chiefly up to the man's economic capacity and the local custom and usage. To illustrate the point, in the Gulf countries and other hotter regions of the world the air-conditioning system is generally regarded to be essential for a convenient residence; in India and other countries of the subcontinent, however, the air-conditioning system is not considered as essential. The provision of the house/residence involves all such aspects.

Another equally important point regarding the provision of residence is that it includes al such goods and articles which have now become indispensable for leading the life conveniently, like furniture, convenient bedding, arrangement of electricity for light, electric fan etc. All such facilities are covered by the term RESIDENCE and the husband shall be required to provide her wife with such a furnished residence.

Funeral Preparations

The final need of the human beings is the funeral preparations. In case the deceased has left nothing whereby his/her funeral preparations

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[1] ibid 5/257

might be carried out, the liability of the deceased's funeral and burial expenses will be of his/her nearest relative who was responsible for the deceased's maintenance during his/her lifetime. To quote the jurist Haskafi here:

و كفن من لا مال له على من تجب عليه نفقته ، فإن تعددوا فعلى قدر ميراثهم .

"The funeral of the deceased leaving nothing behind him/her will be the liability of the person who was responsible for the deceased's maintenance during his/her lifetime. In case there are more than one, they will share the responsibility according to their shares in the estate of the deceased."[1]

This being the general ruling of the *shariat*. So far as the case of the deceased wife is concerned, there are more than one juristic viewpoints. Some jurists hold that funeral of the deceased wife is not the responsibility of the husband as the death has finally ended their conjugal relationship. Another viewpoint is that the funeral preparations will be carried out from the estate of the deceased wife; in case she left nothing, the husband will be liable to his deceased wife's funeral. This opinion has been related to Imam Abu Yusuf (may Allah deal him with mercy).

A yet another opinion is that the funeral and shroud falls under the term 'clothing' which

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[1] Durre Mukhtar with Shami 3/100

constitutes an indispensable part of the maintenance; and therefore the husband shall be liable to shroud her and meet the expenses of her funeral. In other words, it will be the responsibility of her husband to give her the final clothing as he did cloth her during her life time. This is the preferred opinion of Imam Abu Yusuf[1] and to the same viewpoint subscribes Imam Shafie.[2]

Obviously, the life-long companionship of the husband with his wife naturally demands that he should bid final farewell to his life-long partner with suitable arrangements for her.

Maintenance of the mother

As a matter of law, the women whose maintenance is the liability of man are basically three: mother, daughter and wife. So far as the importance of the parental office in Islam is concerned, it needs no mention. Allah *subhanahu wa ta'ala* Himself has mentioned the rights of the parents in His Final Scripture more than once and, side by side the mention of His absolute right of worship, has enjoined the man to acknowledge the rights to his parents and to always maintain an excellent behaviour to wards them. To quote the relevant Qur'anic *ayats* here:

" وقضى ربك أن لا تعبدوا إلا إياه وبالوالدين إحسا□ا ، إ□ا يبلغن عند□ الكبر أحدهما أو كلاهما فلا تقل لهما أف ولا تنهرهما قول لهما قولاً

[1] ibidi

[2] Ghayatu Quswa by Qazi Baizawi vol. 1 p. 163

كريما ً .واخفض لهما جناح الذل�ن الرحمة و قل رب ارحمهما كما ربيا�ي صغيراً . "

" Your Lord has decreed that you worship none but Him, and that you be kind to parents. Whether one or both of them attain old age in your life, say not to them a word of contempt, nor repel them, but address them in terms of honour. And, out of kindness, lower to them the wing of humility, and say: My Lord! bestow on them Your mercy even as they cherished me in childhood."[1]

The rights of mother have especially been emphasized. To quote the *ayat*:

ووصينا الإ�سان بوالديه ، حملته أ�ه وهنا على وهن و فصاله في عا�ين أن اشكر لي ولوالديك ، إلي المصير . وإن جاهدا� على أن تشر� بي �ا ليس لك به علم فلا تطعهما وصاحبهما في الد�يا�عروفاً."

"And We have enjoined on man (to be good) to his parents. In travail upon travail did his mother bear him and in years twain was his weaining show gratitude to Me and to your parents. To Me is your final Goal."

"And if they strive to make you join in worship with Me things of which you have no knowledge, obey them not; yet bear them company in this life with justice and consideration."[2]

The children have no right even to show the slightest disrespect towards them. Explaining

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[1] Al-Qur'an 17:23-24.
[2] Al-Qur'an 31:14-15.

the *ayat* No. 23 of the al-Isra chapter, Imam Baghwi writes:

"The children must not speak even the slightest words smacking of disrespect towards the parents even though the children have to clean them of their urine and excretion, in the manner the parents would clean their children of their natural impurities while they were in their early age."[1]

Needless to say, the excellent behaviour towards the parents will naturally include the satisfying of their needs and meeting their expenses. (Since our talk in limited to the mention of women's financial rights, we shall talk only about the mother's rights here, leaving out the father's.) If the mother is economically self reliant and does not stand in need the maintenance on the part of her children, it shall be morally recommended for her children to provide maintenance for her and meet her expenses gladly. Every endeavour in this regard on the part of her sons will please her and her pleasure is expected to fetch great reward for them from Allah *ta'ala.* But if she is indigent and needy, her children shall be duty-bound to pay her the maintenance duly. Notably, the term 'maintenance' includes her fooding, lodging, clothing, treatment, arrangement of a servant and her other financial needs. In case the sons refuse to pay her due maintenance, they shall be forced

[1] Commentary of Baghwi on the Qur'an vol. 2, p. 675

upon the payment by law. Ibne Qudama Hambali writes:

" ويُجبر على□فقة والديه الخ " .

" …. (The children) shall be forced on the payment of the maintenance to their parents."[1]

Maintenance of the parents is binding upon their children even if the religion of the parents is other than Islam. To quote a jurist authority here:

"ولا تجب□فقة□ع اختلاف الدين إلا للزوجة و الأبوين الخ ."

"In case of the difference between the religion of the maintainer and the maintainee, the provision of the maintenance ceases to be an obligation except for the wife and parents."

The wife has the right to demand a separate residence, but it is a general ruling. If the mother is too old or diseased and needs a nursing attendant the children shall be required to arrange a nursing attendant for her; and in case of non-availability of a nursing woman attendant, the son may force his wife to attend and look after her mother-in-law. The wife is morally bound to serve her mother-in-law; and a moral duty may turn a legal obligation under strained conditions.

Maintenance of daughter (s)

As regards the maintenance of daughter (s), if she is not able to afford her expenses on her own, the father will remain under the legal

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[1] al-Mughni 11/373

obligation on to provide her proper maintenance and meet her financial needs right from her childhood until she comes to an age gets married and goes to the house of her husband, as demonstrates the following citation:

"والأ□ثى حتى يدخل بها زوجها . "

"The daughter shall remain under the care of her father until she gets married and goes to the house of her husband."[1]

The ruling also gets force from a *hadith* of the Holy Prophet (SAWS) which says:

" The daughter shall remain under the financial care of her father until she gets married."

" ولا تسقط□فقة الجارية حتى تتزوج ."

"The right of maintenance of the girl on her father will not cease until her marriage."[2]

Some Maliki jurists have specified that even the married daughter's maintenance might be the obligation of her father if her husband has turned indigent and is unable to afford the expenses of his wife.[3]

In case she is divorced, or suffered widowhood, the responsibility of her maintenance shall again turn to her father[4],

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[1] al-Kharshi, 4/204, also fatawa Qazi Khan printed on the footnotes of the Fatawa Alamgiri 1/447
[2] al-Mughni, 11/378
[3] Footnotes on al-Kharkhashi 4/204
[4] ibid

except that she can earn a livelihood to meet her expenses. Still, her father shall have no right to force her on earning[1].

It is also notable that the maintenance of the girl will remain a duty on her father even if the difference of their creed.[2]

Important Warning

The Islamic *shariat* makes no difference between male and female children and recognizes no grounds for meting out a preferential treatment to sons and denying the same to female children. It is, therefore, absolutely unlawful to commit such paganistic practices.

Maintenance of Wife

So far as the maintenance of wife is concerned, it holds special import as compared to that of other relatives. Their maintenance is never binding on the man; it might be an obligation on the man only under specific circumstances, i.e., when they are unable to meet their expenses by their own. In other words, their maintenance is a moral duty rather than being a legal obligation. But the maintenance of wife is always a binding duty upon her husband as a recompense of her being under his custody and marriage. She keeps herself limited to his house; looks after his house and children, gives birth to his children and satisfies his natural and sexual thirst. Based on

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[1] al-fiqhul Islami wa Adillatuhu 7/821
[2] al-Jauharatun Nayyirah 2/173

such grounds, the maintenance of wife is always a binding duty upon the husband apart from that she is indigent or well to do, can afford to earn her livelihood and manage for her expenses or not; and whether her husband is affluent or poor that is why the Holy Qur'an has expressly mentioned the right of the wife to her maintenance in clear and vivid terms:

"وعلى المولود له رزقهن و كسوتهن بالمعروف ."

" And (the father) shall bear the cost of their food and clothing on equitable terms."[1]

What if a wife refused to go to her husband?

However, the *shariat* has recognized an exception to this rule: only if she turns *naashiza*. Nashiza is an adjectival word and a juristic term. It is applied to a woman who refuses to go to her husband without a legal ground for so doing, or leaves the house of her husband or the residence provided by his for her to live in without his consent and turns disobedient and rude towards him, her right to maintenance will cease. If she turned rude and disobedient to him but has not left his house or residence, she shall be entitled to receive maintenance as usual.[2]

However, if her refusal to go to her husband has legal grounds, i.e., she wants to realize her legal right of dower etc., her right to

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[1] Al-Qur'an 2:233.

[2] Durre Mukhtar with Shami : 5/286

maintenance will not cease. To quote an authority:

" فإن طالبها بالنقلة فا□تنعت ، فإن كان ا□تناعها بحق بأن ا□تنعت لاستيفاء□هر العاجل فلها النفقة . "

"If he asked her to go to his house and she refused, so if her refusal has a legal grounding, e.g., the realization of her immediate dower, she will be entitled to maintenance." [1]

The *Shafais* too share the same viewpoint. To quote an authority here:

" ... □ا لو ا□تنعت□فسها لتسليم المهر العين أو الحال فإن لها النفقة□ن حينئذ . "

"If she has detained herself so as to realize her dower or its immediate part, she will be entitled to receive the maintenance since the time of her self imposed detention.

Likewise, if she feels insecure about herself her honour or belongings at her husband's house, or, she feels apprehensive of an ill-treatment on the part of husband or her in-laws there; or her husband fails to provide her due expenses of her fooding, lodging and clothing; forces her on earning or committing an act of disobedience to Allah and His Prophet (SAWS), or demands her to bring dowry or is not prepared to pay her dower despite that it was to be paid immediately paid, under all such circumstances she has the right to refuse to go to her husband's house or joining him. And since such a refusal has a legal

[1] Badaius Sanai: 3/422-23

grounding, her right to maintenance shall not cease.

Maintenance of the past days

Another important aspect of the wife's right to maintenance is whether she is entitled to realize the maintenance of the past days during which her husband failed to pay the maintenance to her and she somehow managed to meet her expenses. According to the Maliki viewpoint the maintenance of the passed days will remain a duty on the husband and she shall have the right to realize it even if it is not imposed on him by an authority.[1]

The same viewpoint is shared by the Shafaites and Hambalites.[2]

More so, Ibne Qudama has put it succinct words that the payment of maintenance of the lapsed time shall remain a payable debt on the husband apart from that his failure to pay her the maintenance was occasioned by a reason or with no reason at all. To quote his words:

" تطالبه إذا أيسر ، و إن لم يفرضه عليه حاكم . "

So far as the Hanafi standpoint is concerned, it slightly differs from the above-cited viewpoints. To the Hanafis, the unpaid maintenance of the past time will be a payable debt on him only in two circumstances either there existed an agreement between the espouses

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[1] Hashiatud Dasuqi 3/492

[2] Razati Ta;onom 9/55

to pay and receive a fixed amount as maintenance monthly, or the amount of maintenance was fixed by an authority of law and despite the agreement on the judge's decision the husband failed to pay her the amount of maintenance agreed upon or fixed, the husband shall be legally bound to pay the maintenance of the past time.[1]

However, this viewpoint was adopted by the Hanafis in view of the social conditions of the past ages when the Islamic *Fiqh* was passing through its formation; during these ages it was very easy for an affected woman to seek the help of the Islamic judicial system to realize her maintenance and other legal rights. But in our age it has become very complex and financially cumbersome to get the help of law. So, it will be a travesty of justice to put her under such circumstances when she feels compelled to make recourse to judiciary for the realization of her maintenance. This also may provide a back door to the cruel and unjust husbands to flee from their legal obligations. The preferable viewpoint in our age will therefore be the one adopted by the Malikites, Hambbalites and the Shafaites. Doing so will be in accordance with the general principles of the *Shariat* which says that a legal right can not lapse except in two situations; either by paying it to the concerned party, or that he/she writes it off.

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[1] Raddul Muhtar 5/312-13

If the husband is unable to afford his wife's maintenance?

In case a person is not paying the maintenance of his wife purely because of his poverty and indigence and the wife too is not in a position to meet her expenses on her own, according to the majority of the *fuqaha,* the marriage of such an indigent person will turn subject to dissolution. According to the Qur'anic expression a woman can be kept under the bond of marriage only in one of the two ways.

" فإمساك بمعروف أو تسريح بإحسان ."

"… either holding together on equitable terms, or separate with kindness."[1]

The Quranic phrase *imsaakum bi ma'aroofin* means holding the wife together on equitable terms. Quite obviously, holding the wife together includes the payment of due maintenance to her. If a person fails to do so, irrespective of that he can afford it or he is indigent, he is not holding his wife on equitable terms; he in fact is exposing his wife to starvation. So, if he is unable to pay due maintenance to his wife and she too is not in a position to meet her expenses on her own, the better course of action for such espouses is not other than the separation.

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[1] Al-Qur'an. 2. 229

In case such a penniless husband is not prepared to part with his wife, she shall seek the help of law and on her demand the Qaazi shall dissolve her marriage with such a husband. This is the opinion of the Malikites, Shafaites and the Hamblites.[1]

The Hanafis, however, do not agree with such a harsh decision against an indigent husband. Since the Hanafis hold the marriage bond to be a sacred one rather than being mere a legal accord between the espouses, binding them on sharing each other's pains and pleasures, the marriage of the penniless husband shall not be dissolved. If the wife seeks the intervention of the judicial system, the Qazi shall direct her to seek credit on the name of her penniless husband to meet her expenses.[2]

However, in our age seeking the help of the judicial system has become extremely difficult, and the private Muslim *Darul Qaza* system lacks the power of execution. So, in the face of such adverse situation if the woman asks for the dissolution of her marriage with such a penniless husband, it should be dissolved. Non-dissolution

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[1] cf Mukhtasar Khalil with Mawaahibil Jalil 5/561, Footnotes on al-Kharkhashi 4/196-97, Footnotes on al-Dasuqi 3/494-95, Sharh al-Saghir 2/745-46, for the Maliki view point, and Minhaaj with Mughni al-Muhtaaj 3/442-43, al Wajiz of Imam Ghazali p. 337, Rozatu Talibin 9/72 for the Shafai viewpoint: for the Hambali view point c f al-Mughni of Ibn Qudaama 11/260-61, al-Muqni 24/363, al-Kafi 5/91)

[2] For more detail c f Badaiu Sanai, 2/524, Majmail Anhur 1/490, al-Bahrur Raiq 4/312, Raddul Muhtar 5/306

of her marriage may lead her to sin, thus resulting in her moral ruin. That is why the Darul Qaza system in India follows the majority (non-Hanafi) view.

Not paying the maintenance in spite of affordability

A yet another aspect of the maintenance is the non-payment of it to his wife despite his affordability. To meet such a situation most *fuqaha* are of the view that if the money or other goods of such a close-fisted husband fall under the hands of his wife or the State authorities, they shall be disposed of thereby to make arrangement of the wife's maintenance. But if there exists no such option and the wife is persistent on her demand of separation and dissolution of her marriage, the *qazi* shall dissolve the marriage. This is the opinion of the Maliki jurisprudents.[1]

To the same opinion do subscribe the Hambalites. They have expressly put it that such a deprived woman will meet her expenses from the property and possessions of such an unworthy husband, with or without his permission, if there exist disposable possessions. If there exists no such options, the Qaazi shall untie the knot of her marriage.[2]

Amongst the Shafies we find the supporters of both the opinions. Imam Ghazali

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[1] cf Haashia Dasuqi 3/494, al-Sharhul-Saghir 2/746 Hashia Savi on al-Sharh al Saghir 2/745

[2] cf al-Mugni 24/392, and al-Insaaf al-Mugni 24/382

tends to the dissolution of such a marriage if the woman so demanded.[1]

The Hanafis, however, are against the dissolution of marriage. To their opinion such a person shall be jailed and forced upon paying the maintenance of his wife.[2]

The Hanafi viewpoint, as we have just put it, is not practicable in this age. It was practicable in the golden ages of the Islamic civilization when seeking the help of law had been an easier option. Under the present secular State the attainment of justice has become an arduous task. In view of such practical difficulties the great Hanafi scholars of India have adopted the Maliki viewpoint. Maulana Ashraf Ali Thanawi's celebrated book al-Hilatun Naajiza and Maulana Abdul Samad Rahmani's Kitabul Faskh wa Tafreeq deal with such complex aspects of the Muslim familial law in greater detail.

What after the divorce?

With the pronouncement of divorce the bond of *nikaah* ceases to exist; but the woman will not remarry until she is under the period of *iddat;* and during this period her husband shall be liable to pay her due maintenance. The Qur'an itself has expressly put it. Likewise, if the divorced woman is pregnant, her waiting period (*iddat*) shall end

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[1] cf Mughniul Muhtaj 3/442

[2] cf al-Bahrur Raiq 4/315, Majmaul Anhur 1/490

with the birth taking place. To quote the wording of the Qur'an:

" وإن كن أولات حمل فأنفقوا عليهن حتى يضعن حملهن ."

"And if they are pregnant, spend on them untill they give birth."[1]

All the *Fuqaha* hold unanimously that the woman's right of maintenance will cease as soon as her period of *iddat* expired, and no claim of maintenance shall be entertained after the expiry of the term of waiting. To some *fuqaha* the maintenance during the *iddat* period shall be payable irrespective of the fact that the divorce is revocable or irrevocable. Likewise, all the *fuqaha* are unanimously agreed upon that if the divorced woman is pregnant, she will receive the maintenance whether the divorce was revocable or irrevocable. However if a non-pregnant woman is divorced irrevocably, no maintenance shall have to be paid to her according to the Maliki, Shafie and Hambali viewpoints. According to another viewpoint she shall be provided the residence and not the maintenance. But to the Hanafi viewpoint the divorced woman shall receive the maintenance during the *iddat* apart from that the divorce was revocable or irrevocable. It is because of the fact that during *iddat* the divorced woman remains unable to move to anywhere nor she can earn or remarry.[1]

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[1] Al-Qur'an 65:6

[1] cf Badaius Sanai 3/422 for the Hanafi viewpoint, and Mawahibul Jalil 5/553 for the Maliki view, and Mughniul

Important warning

Since after the expiry of the *iddat* period the marriage turns completely dissolved, there remains no question of maintenance for the divorced wife at all, and no Muslim woman is permitted to receive any amount of maintenance from her former husband even if the law decided in her favour. However, if she has one or more children under age and she is legally rightful to upbringing them she shall be rightful to receive the maintenance of her children and the wages of bringing up and looking after her divorcing husband's children. In case of the girl children the period of care is until they come of age and in the case of male children it is until they are eight or ten years old. The wages of the divorced woman caring the under-age children should be as sufficient as to meet her indispensable needs. Such a woman is entitled to receive due maintenance from her former husband as the wages of looking after and bringing up his children and never as his ex-wife.[1]

More so, if the under care child is under his/her fosterage, the divorced woman shall be entitled to receive double wages in addition to the maintenance, one of fostering and the other of caring and bringing up his child. To quote a jurisprudent of note:

Muhtaaj for the Shafie view; and al-Kaafi 5/81, al-Sharh al Kabir 24/310

[1] Durre Mukhtar with al-Raddul Muhtar 5/277

" فعلى هذا تجب على الأب ثلاثة : أجرة الرضاع ، أجرة الحضانة ، ونفقة الولد . "

"This way the (divorcing) father will have to pay the three fold wages; of fostering the baby; of caring and looking after the baby and the maintenance of the baby."[1]

Maintenance of other relative women

Besides the maintenance of mother, daughter and the wife, there might develop circumstances when the maintenance of other relative women might turn a moral and legal obligation on man. Such women include the sister, grand mother, (paternal and maternal) grand-daughter and the daughter's daughters, etc,.. The maintenance of such women relatives becomes obligatory on man if they are not in a position to meet their expenses on their own and the concerned man is in a position to afford their maintenance. This kind of maintenance shall be a duty only on *mahram* male relatives according to their shares in the estate of such women relatives:

" ونفقة المحارم تجب على ذي الرحم المحرم ".

If a man is faced with such specific situations in which he has to pay maintenance to his female relatives, he is promised to get great reward from Allah in the Hereafter. The Holy Prophet (SAWS) is reported to have said:

"He who looked after a widow woman or indigent relative, such a person will receive as

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[1] al-Bahrur Raiq 4/221

great a reward from Allah as of the person doing jihad in the way of Allah and worships Allah whole the night and fasts."[1]

[1] Bukhari, Book of Nafaqaat, Hadith No. 5353

Chapter Three

Dower: An Important Financial Right of Woman

From among the financial rights resulting from marriage the *mehr* (dower) holds special import. *Mahr* is not prescribed by the *shariat* as a compensation of the being of woman; it is to be paid as an acknowledgement of respect of woman's chastity. More than one *ayats* of the Qur'an make mention of the *mehr*. Legally speaking, the *mehr* is from among the obligations of marriage the man owes towards woman. To quote the Qur'an:

" و آتوا النساء صدقاتهن□حلة . "

The word *nihlah* has been translated by H. Ayisha (may Allah be pleased with her) as farizah (duty; something to be necessarily paid). Other scholars too are of the view that *nihla* means some thing to be necessarily paid.[1]

Based on this express command of the Holy Qur'an, the fixation of the *mehr* is a requirement of marriage. In case the man married on condition that he would pay no amount of *mehr*, he still will have to pay is wife the *mahr mithl* (the amount of *mehr* similar to those of her sisters, her maternal and paternal aunts etc.) This is according to the Hanafi viewpoint. As regards the Malikites, such a marriage shall be considered null and void.

[1] Ibne Kathir: the Commentary on the Holy Qur'an 2l561

Limiting the amount of *mehr*

The minimum amount of mahr is ten *dirhams*.[1]

No amount of *mehr* less than it shall carry no legal value and will not be fit to be fixed as *mehr*; and the man will have to pay the mount of ten *dirhams* in the least. This ruling is based on the Holy Prophet's following saying:

" لا مهر دون عشرة دراهم . "

"No *mehr* (dower) less than ten *dirhams*."[2]

According to the modern system of weighing, ten *dirhams'* weigh 30.618ml. To Imam Malik the amount of *mehr* must not be less than one golden dinar or three pure silver *dirhams*. One fourth dinar weighes 41/2 *maashas* and three *dirhams* weigh around eleven grams. Like that of the Hanafis the Maliki viewpoint too is based on some *ahadith* of the Holy Prophet (SAWS). So far as the Shafie and Hambali viewpoints are concerned, they have no limit of *mehr* for the minimum amout; any thing which could be given away to any one else as price or compensation of any thing might be fixed as *mehr*.[3]

But there is a general agreement of the *fuqaha* on that there is no upper limit for *mahr*. The Qur'an itself has employed the word *qintaar,* which denotes a much greater quantity of money.

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[1] Badaius Sanai 2/561

[2] Sunnane Baihaqi 7/392, Hadith No. 14382

[3] Sharh al-Muhazzab 18/7 al-Mughni 10/101

To the assessment of H. Abdullah b. Abbas (may Allah be pleased with them) it might be the sum of twelve thousand *dirhams* or one thousand *dinars* which of course is a much greater amount.[1]

We come across the instances of fixing a very considerable amount of money as *mehr* in the blessed age of the Holy Prophet (SAWS) and of his blessed companions. For example, H. Umme Habiba's dower was fixed four thousand *dirhams*, which was fixed and paid to her by the Nagus, the king of Ethiopia.[2]

Regarding the fixation of a limit of dower an interesting point is worth mentioning here. Seeing the general practice of the people of taking pride in fixing much greater amounts of *mehr* in his age, Haz. Umar b. al-Khattab (may Allah be pleased with him) took notice of this unhealthy social tradition and intended to limit the amount of dower upto four hundred *dirham* in the maximum. He mentioned his intentions in one of his public addresses he delived on the pulpit of the Prophet's masjid. When he discended from the pulpit, a Quraishi woman expressed his objection to his proposal in her following words:

How can you put an upper limit on the quantity of the money of dower whereas Allah *subhanahu wa ta'ala* says in His book.

" وآتيتم إحداهن قنطاراً فلا تأخذوا□نه شيئا " .

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[1] Sunan Baihaqi 7/381 Hadith No. 14340

[2] Sunan Abu Dawud Hadith No. 2108, also Sunan Baihaqi 7/382 hadith No. 14346

"And you have given them a whole treasure for dower, take not the least bit of it back."[1]

H. Umar was always prepared to accept the right thing. Heard her objection, he could not help say: "O Allah! Forgive me. All persons possess more understanding than Umar".

Then he mounted the pulpit again and withdrew his proposal in the following words:

" O the people! I had suggested to you not to fix the amount of money for dower more than four hundred *dirhams*; but now you are at full liberty to fix any amount of money as dower with no upper limit at all.[2]

With the marked improvement in the economic conditions of the blessed Companions and when Allah *Ta'ala* bestowed affluence on them, the Companions too married the women on greater amounts of *mahr*. H. Umar himself married H. Umme Kulthum, daughter of H. Ali b. Abi Talib, at a dower of forty thousand *dirhams*.[3]

In all probability, this higher amount of dower was intended to show special respect for the household of the Holy Prophet (SAWS) as Umme Kulthum was the grand-daughter of the Holy Prophet (SAWS). About H. Abdullah b. Umar it has been reported that he would fix the

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[1] Al-Qur'an 4:20.
[2] Mamuz Zawaid 4/521-22 hadith No. 7501
[3] Sunan Baihaqi 7/381 hadith No 14341

amount of one thousand *dinars* as her daughters' dower.[1]

Some reports mention it to be fifteen hundred *dinars*[2].

H. Anas b. Malik (may Allah be pleased with him) married a woman at a dower of twenty thousand (perhaps) *dirhams*.

The instances we have just cited establish beyond doubt that there is no evil in fixing great amounts as dower as long as the intention is to really give the amount to the wife and not seeking pride in it, and the amount is within the financial capacity of the marrying man.

As a matter of rule, moderation has to be maintained in so far as the fixation of money in dower; it should not be so meagre carrying no economic weight nor too high too difficult to be paid and behind which generally there exists no sincere intentions. The dower of the Holy Prophet's wives generally moved around the amount of five hundred *dirhams*.[3]

According to preferable report the same amount was the dower of H. Fatima[1] (may Allah be pleased with her) Based on these reports, many scholars hold it recommendable not to fix the dower at more than five hundred *dirhams*.

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[1] Baihaqi 7/381, Hadith No. 14346
[2] See Musannaf Abdul Razzaq 6/180 hadith No. 10419
[3] Muslim, reported by Abu Salma hadith No. 1426
[1] Musannaf Abdul Razzaq 6/180 hadith No. 10419

According to the modern system of scaling the weight of five hundred *dirhams* is 1530.900.

Payment of dower in gold or silver

Having established that moderation is always a preferred option in so far as fixation of the dower is concerned, the Muslim jurisprudents do not fail taking into consideration the girl's family traditions in this regard. In the terminology of the Islamic *Fiqh* it is termed as the *mehre mithl* (proper dower). The proper dower means the *mehr* of the girls of the bride's paternal family. In the proper dower, a due consideration has to be given not just to the amount of money, but the purchase power and market value of it as well. To illustrate the point, it will never be a matter of justice to fix today the dower of a girl at ten thousand rupees seeking the parity with for instance, her paternal aunt's ten thousand rupees twenty years ago from now, as, despite the parity in number, today's ten thousand rupees are nowhere as compared to those of the twenty years past. Before twenty years the market value of ten thousand rupees was to purchase at least fifty grams of gold, but in exchange of the same amount of rupees today we can't purchase even 10 grams of gold. Unfortunately, the majority of the Muslims has no sound practices; the people lie on two extreme limits. There are regions and fraternities which fix the amount of dower at five hundred rupees; others fix it at laces of rupees as a matter of pride, but never pay it to their views.

Since there is no stability in the value of the currency notes, and is subject to a constant decrease, the dower has to be fixed in the form of gold or silver, thereby to avoid the serious financial damage of the woman. Before three decades the amount of Rs. 5000 constituted a great deal of money, today but the same amount of rupees have turned too insufficient to cover the indispensable expenses of a month even of a poor family. Since the value of gold and silver are comparatively stable, it will be advisable to fix a certain amount of gold or silver in dower rather than fixing it in terms of the currency notes. This is expected to secure the pecuniary rights of wife in a safer way. To illustrate the point more, if we fix, for instance, fifty gram of gold as the dower of a woman today, it worths over Rs. 65000. In case the *mehr* is paid after a lapse of twenty years, the woman will own 50 grams of gold. If, on the contrary, the *mehr* is fixed in currency notes of fifty thousand and is paid after twenty years as in India it is a genral practice not to pay the *mehr* promptly. It is feared that the said sum will be the cost of only twenty grams of gold. Obviously, this will be great injustice and disfavour towards the woman; indeed she will be subject to a two-fold injustice- long deferment of her dower and of devaluation of the sum of her dower. Considering that, the Islamic Fiqh Academy of India, in its second *Fiqhi* seminar, held in 1989, issued the following resolution:

"The *mehr* should be fixed in terms of gold or silver so that the (economic) rights of the womanfolk are better preserved and safeguard their legitimate interests against the loss due the devaluations of the currency notes." [1]

Mehr a debt on the husband

It must be kept in mind that the unpaid *mehr* remains a debt on the husband like all other sorts of debt. The right course, for husband therefore, would be to make the defrayal of the *mehr* at the time of marriage. The blessed age of the Holy Prophet (SAWS) and the eyes of the Companions witnessed the same practice, at least a part of the dower was paid before touching the wife. The tradition remained so strong in the Muslim Arabic society that the claim of a woman that her marriage has been consummated without receiving the amount of *mehr* from her husband deserved no consideration; because such a claim was found contrary to the prevailing tradition.[2]

In India, however, the general tradition persistingly condinues of not paying the amount of *mehr* at the time of marriage. Worse still, the practice has now became so strange that if a husband ever wants to pay the *mehr* of his wife, she becomes apprehensive of her marriage to be on the verge of dissolutions.

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[1] Nain Masail ur Ulama Hind ke Faisle p. 88
[2] Raddul Muhtar 4/300

If a husband has no intention to pay the *meh*

Mostly, the people have no intention at all to pay the *mahr;* it is fixed at the time of marriage as mere a custom. Such an intention is entirely opposed to the directives of the Holy Prophet (SAWS). He (SAWS) is reported to have said: "If a person married, fixed the dower with the intention of not paying it to his wife, with Allah such a person shall be treated as an *adultrator*. [1]

A yet another *hadith,* with even stronger warning, is as following:

"If a person married a woman on a certain amount of *mehr* (dower) hiding in his heart his intention never to pay the same to her, if such a person died without paying it, on the Day of Judgment he will meet Allah *ta'ala* as the guilty of adultery.[2]

There are people who exploit their differences with their wives in order to make them part with their dues of dower on their own instance. Needless to say, this is an act of extreme indecency and impudence resulting from God-unconsciousness. On the authority of H. Abdullah b. Umar (may Allah be pleased with them) the Holy Prophet (SAWS) is reported to have said: "To Allah the most sinful person is he

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[1] Musannaf Abdur Razzaq 6/185 hadith No. 10443, also Sunane Baihaqi 7/394

[2] Majmauz Zawaid 4/523 hadith No. 7507 with reference to Tabrani

who married a woman, satisfied his sexual desire and then divorced her without paying her *mehr* to her."[1]

It is therefore important to have a sincere intention of paying the wife her stipulated money of dower. If a person have a sincere wish to pay the debt he owes to somebody, Allah *subhanahu wa ta'ala* helps such a person.

In case there develops situation under which a person feels himself compelled to exercise his right of divorce, he must not seek excuses to avoid the defrayal of dower; the divorced woman deserves even something more than the dower, recommended in the Qur'an for her and termed as *mata:*

" وللمطلقات□تاع بالمعروف حقاً على المتقين ."

"For divorced women is a suitable gift; this is a duty on the righteous."[2]

That is why the *fuqaha* have a unanimous agreement on that if the woman is compelled to ask for *khula* (legal separation of the espouses) due to her unfair and unjust treatment on the part of her husband, the man has no right to ask her to part with her right of dower. However, if the *khula* is being sought due to a fault of the woman, the man may ask her remit the amount as equal to that of dower. Still, the better course of action for him would indeed be the defrayment of the

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[1] Mustadrik Hakim 2/199, hadith No. 2743

[2] Al-Qur'an 2:241.

amount of dower. Under such a situation too it will be undesirable for him to ask the *khula* amount exceeding in quantum to that of mehr.[1]

Mehr Should be paid from the estate first of all

In case the man failed to pay the dower of his wife during his life and died, the *mehr* shall be paid from the estate first and then the estate shall be distributed among the heirs As a matter of rule, the unpaid *mehr* is much the same as the debt one owes to others. The unpaid *mehr* shall be included in the debts the deceased owed to pay. Sadly enough, there are areas where there exists the tradition of asking the woman remit her due of dower immediately after the death of the man. Even in some areas the woman is asked the same putting the dead body of her husband before her; and the women press her morally. This amounts to exploiting the sad environment and causing financial damage to a widow. Under such emotional conditions she finds herself compelled to part with her due right even if against her will. This of course is an extremely undesirable way, entirely opposed to the nature of the *shariah.*

To sum up the whole discussion:

1. *mehr* is a very important financial right of woman on her husband granted to her by the *shariah,*

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[1] Hindiya 1/488, chap. *Khula*

2. in fixing the *mehr* moderation has to be maintained; it shouldn't be so meager and insignificant sum nor too much high, whose defrayal is beyond the capacity of the man;
3. it is advisable for man to defray the total amount of *mehr,* or at least a fair part of it, at the time of marriage or before the consummation of marriage.
4. if the *mehr* is to be paid later, it ought to be fixed in terms of gold or silver;
5. if the husband died without paying her *mehr*, it must be paid first from his estate as is the ruling of the *shariah* regarding the unpaid debts one owed. Only then the residuary shall be distributed among the heirs; and
6. in case there arises a situation under which the espouses decide to

> separate let the men not defer the defrayal of her unpaid *mehr* or compel her on asking for *khula*.

Position of *Shariat* on dowry (*jahez*)

The parents are at liberty to give any thing as gift to their daughter whenever they so wish. However, as far as the practice of giving and taking dowry as an essential part of the marriage in our age is concerned, it is entirely inconsistent of the nature of the Islamic *Shariat*. Some try to trace the roots of the practice in that the Holy Prophet (SAWS) gave dowry to his daughter, Fatima. This is a case of a grave misconception.

The fact is that both Fatima and Ali (may Allah be pleased with them) were under the guardianship of the Holy Prophet himself(SAWS). When he (SAWS) received the proposal of Ali for his daughter, Fatima, the Prophet (SAWS) welcomed it and sold a Armour of Ali which he had got as the booty in the battle of Badr and purchased the essentials of a new household for a part of its price; and returned the residuary to Ali so as he might offer a part of the dower to Fatima. The detail exists in the *hadith* and *seerah* literature.[1]

Whatever we have just said above establishes it beyond doubt that the arrangements

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[1] Cf Musnad Ahmad 1/98 hadith No. 1603, also p. 113 hadith No. 715

the Prophet (SAWS) made in the case of Ali and Fatima were as a part of his responsibility towards a couple consisting of his daughter and cousin who were going to start their life as wife and husband. That the Holy Prophet gave nothing to his daughters as dowry is also established from the fact that he gave nothing to his other three daughters – Zainab, Ruqayyah and Umme Kulthum, as it is beyond every sort of doubt that he treated all his daughters with perfect equality and preferred none to others. This, therefore, will be a mistaken view to think that the practice of giving *jahez* is an act of sunnah. Its demand is entirely inconsistent with the nature of the Shariat. Many juristic expressions suggest that making demands of anything from the family of the bride amounts to taking bribe and therefore constituting an act grossly unlawful.[1]

About the bribe the Holy Prophet (SAWS) had issued a stern warning in the following words: "Curse of Allah be on the giver and taker of bribe."[2]

Admittedly, there might be circumstances where one may feel onself compelled at giving bribe. But the taking of bribe involve no compulsion at all. So it is absolutely unlawful, and if taken its returning is obligatory.[3]

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[1] Ibne Hazm, al-Muhalla 11/119
[2] Tirmizi, from Abu Hurairah, Hadith No. 1336
[3] Raddul Muhtar 8/34-35, Chap. Rishwa and Hadya.

To cut the long story short, making demand of dowry or cash amount is an act of grave sin and crass disobedience of Allah the use of things such taken is entire unlawful. How a marriage with such acts of gross disobedience as to attract the curse from the Holy Prophet (SAWS) could be a blessing! The marriage should be an easier and simpler act. To quote the Holy Prophet (SAWS) again:

"إن أعظم النكاح بركة أيسرها□ؤ□ة ".

"The marriage with greater blessing is the one involving less expenses."[1]

with a view to suppress the evil of the practice of giving and taking the dowry in marriage, the Islamic Fiqh Academy of India, in one of its Fiqhi seminars attended by a sizeable number of the Ulama representing different schools of Islamic thought endorsed the following resolution:

The session of the Islamic Fiqh Academy expresses deep concern over general mentality of putting bridegrooms on sale, rampant in the present Muslim society, where boys are treated as a market commodity. Not only the boys themselves make higher demands of dowry but also their parents and relatives to make do clean and higher demands. They are on a look as to who makes the highest bid for them. Shariah prohibits taking from the girl's party anything in

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[1] Musnad Ahmad, hadith No. 24520 on the authority of H. Ayisha

the name of social custom or prevalent dowry Rather, Shariah has entrusted a man with bearing the expenses of matrimony as ordained by the Qur'an. Today, we have reversed this Qur'anic principle and women are forced to spend money on matrimony. Sometimes the groom's party makes a clear demand for dowry while at others it is received under the garb of customs and rituals. The Shariah forbids all such forms of acceptance and offer.

This session of the Academy calls upon the Muslims of India to set the Muslim society on the path shown by the Prophet (SAWS) and to execute matrimonial alliance in a simple fashion, avoiding all sorts of extravagance. They should hold matrimonial ceremonies without forcing the girl's party to yield to their undue demands and strictly follow the Sunnah of the Prophet (SAWS)

Chapter Four

Women and earning a livelihood

In view of the good of the family system, better upbringing of the off spring; and in consideration of the natural abilities of the women, the Islamic Shariat has divided the familial responsibilities between man and woman in such a way as the responsibility of earning a livelihood has been put on the man as it involves much physical labour and harder struggle. The in-house works and homely responsibilities have been attached to women. It will be an incorrect expression to term the wife as the home-servant; she is the owner of the house instead. To quote the words of the Holy Prophet (SAWS):

" المرأة راعية على بيت بعلها وولده ، وهي مسئولة عنهم ."

“Woman is the supervisor of the house of her husband and his children and she is accountable to Allah about them.“[1]

Woman cannot be forced on earning a livelihood even if she is capable of it. This law of the *shariat* is indeed a great blessing for women. As compared to the law of Islam, the women in the West are subject to a two-fold arduous task; they have to bring up their children and do the house job on one hand, and earn money and share the men’s economic responsibilities on the other.

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[1] Bukhari, Hadith No. 2554, Muslim Hadith No. 1829

The distribution of the responsibilities between the men and women according to the dictates of nature provides the guarantee of life security to the family system.

It is an undeniable demonstration of the human nature that the mutual needs play a very significant role in the establishment of the mutual relations and one learns to bear the another. A labourer bears the capitalist because he sees that his livelihood depends on him. On the other hand, a capitalist has to bear the labourer as he knows it well that only his capital and wealth can produce nothing unless the hands of the labourer touch the capital. The same rule is applicable to all other walks of life. Take for instance, the marital life; for the sake of peace and tranquillity of his mind and also for a better upbringing and care of his children the man stands in earnest need of his wife, and the wife, on the other hand, needs her husband for her maintenance and the protection of her life. This mutual dependence lends security to their mutual relationship and every party has to bear each other. A sexually perverted husband has little feelings of love towards his wife and children and, as a result, he loses the ability of tolerating her weaknesses. An economically independent wife, likewise, could hardly prepare herself to a peaceful coexistence with her husband, especially if there developed grievances between the espouses. In short, the compartmentalization of the outdoor and indoor responsibilities of life between husband and wife

compels both the husband and wife to hold the hands of each other and tolerate each other despite grievances.

Contrariwise, in the West since women were made to come out of the house and lured into sharing the men their struggle for earning a livelihood, the western society was flooded with the abundance of divorce and separation. The marital relationship turned even weaker than the cobweb. As an unavoidable consequence of the violation of the law of Nature, the family system in the west collapsed; divided the children of their parental identities, compassion and love. Rarely are there wives who receive and welcome their hard-working husbands. The wives too lost the faithful life partners who have sincere love towards their wives, prepared to live with them even in the old age.

However, this does not mean that Islam holds it completely outlawed for woman to take part in the struggle of earning a livelihood; remaining under the limits of the *Shariat*, she cam share the earning struggle for her family, with the consent of her father before her marriage, and with the consent of her husband after her marriage.

Different ways of earning a livelihood

Basically, there are two ways of earning: taking direct part in the economic struggle; and indirect investment. As far as the direct struggle is concerned, there are four types of it: (1)

business and trade, (2) agriculture (3) artisanship, and (4) renting or employment. A shorter description of all the four follows:

Trade or business

Trade means selling and purchasing, i.e., carrying out a sale and purchase activity by one self or through the agency of another person with profit sharing. Women have the right to exercise the trade activities – of selling and purchasing. Ummul Muminin H. Ayisha Siddiqa (may Allah be pleased with her) purchased Barira, a handmaid, from her owners.[1]

H. Shifa Advia is reported to have the business of *attar*. Asma d. Mikhrama had the business of the sale and purchase of perfumes during the caliphate of H. Umar (may Allah be pleased with him) and Abdullah bin Abi Rubaia would send the perfume commodities to her from Yeman. In this business her responsibility was to bottle the perfumes, sell out it and maintain the register of credit sale. [2]

There exists a number of similar other narrations in the *hadith* and *fiqh* literature. The *Fuqaha* are unanimously agreed on that for exercising the trade activities it is not a condition to be a male; what requires is to be a sane and adult. A woman has the liberty to exercise the

[1] Tirmizi, Hadith No. 3125
[2] See Tabaqate Ibne Sa'ad 8/300

trade activities within the limits of the Shariat, by herself or through her agent.

Agriculture and Farming

Being a male is not a condition to exercise the farming and agricultural activities within the limits of the *Shariat* a woman is fully allowed to farming and undertaking agricultural activities. Horticulture too could be the field of the woman activities, either directly or through the help of the labourers. While going to Tabuk, on the occasion of the Expeditions of Tabuk, the Holy Prophet (SAWS) saw a woman in her garden at the Wadiul Qura. To assess the quantity of Zakat on the garden the Prophet (SAWS) estimated the total of its produce. This suggests that the garden was hers and she was looking after it.[1]

Jabir (may Allah be pleased with him) says that his divorced maternal aunt wanted to pluck the fruit of her date tree; somebody precluded her from so doing. She put the situation before the Holy Prophet (SAWS). The Prophet (SAWS) allowed her, saying: "Why not, you may pluck the dates of your tree, out of its produce you will spend some thing in the way of Allah, do a work of charity or a deed of virtue."[2]

This establishes well that woman can bake earning by farming and agricultural activities.

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[1] Bukhari, Badr of Zakat, from Abi Humaid al Saidi, hadith No. 7

[2] Muslim, Book of Musaqaat, Hadith No. 2293

Artisanship and craftsmanship

As far as the artisanship and craftsmanship is concerned, the women are allowed to learn and practice the sorts of artisanship and crafts within the limits ordained by the *shariat*. The arts and crafts should be consistent with their natural structure and in-born abilities. The wife of H. Abdullah bin Masud (a Companion of note) had the knowledge and experience of some crafts. Her husband, Abdullah, and the children were unemployed she asked the Holy Prophet (SAWS):

"Since I have to spend my earning on my husband and children, I'm unable to do the deeds of charity. Will I get any reward of it?" the Prophet (SAWS) replied her:

" لك في ذلك أجر ما أنفقت عليهم . "

"You will get the reward of your spending on them."[1]

The above quoted narrations, with its short and detailed versions, has been recorded by many books on *Hadith*.

H. Sa'ad bin Sahl (may Allah be pleased him) reported that a lady, once, offered a shawl with its borders having the embroidery work, to the Holy Prophet (SAWS) and said that the embroidery work was her handiwork.[2]

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[1] Bukhari, Book of Zakat, Hadith No. 1446

[2] Bukhari, Book of Janaiz, Hadith No. 1277

Similarly, in the *hadith* literature, we come across the narrations mentioning some women companions did the work of making daggers. The modern age has given birth to countless works where the women may engage themselves in them as, for example, computer work and electronics. Again, their engagement in jobs must not violate the rules of the *shariat*.

Renting out and Employment

Renting out is also a means of earning. Since it is not a legal requirement to be a man for renting out one's property, house, shop, etc., or giving on hire one's services, it is quite lawful for women to make earning through these means. Like man the woman too is at liberty to give on rent her owned houses, rooms, equipments, etc. The other aspects of this means of earning is to give on hire one's services and receive the wages. This aspect may be termed as seeking employment. Like men, women too may seek employment within the limits of the *shariat* and with the permission of her father before marriage and with the consent of her husband after marriage. All the school of jurisprudence are agreed on the point that the woman with surplus milk may suckle another baby and receive the wages for it.[1]

This sort of employment is entirely exclusive for women. Similarly, the Islamic teachings allow the *Mukatab*, (an especial type of

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[1] Majma'ul Anhur 1/497

slave and girls-slave), to seek freedom from the bondage through their earning by labour and hard-working.

In short, even though the Islamic *shariat* does not hold woman responsible for making an earning, there is nothing wrong in it if a woman is prepared to take part in the struggle of earning within the limits of the *shariat* and support her parents or husband and children. There might be cases under which a woman is left with no option other than employing herself in the economic struggle of the family. In case the husband is inactive, or unable to earn, and fails to properly meet the expenses of his wife and children, the woman will have to struggle for earning in order to support her family and sustain herself. The Islamic *shariat* holds it lawful for women to make earning under such circumstances. Her earning will be hers own with complete rights of ownership. It must be noted here that in spite of earning of the wife, the husband shall not be considered exempted from paying the expenses of his wife and children, except that she so wills.

Investment

There are sorts of earning in which the earning is made through indirect investment. Out of them three sorts are mentionable:

(1) Muzarbat, (2) Partnership; (3) Muzar'aat.

As far as the *muzarbat* is concerned, this sort of investment consists of two partners (1) investing partner (2) working partner. Both the partners share the profit and labour according to their agreement.

As regards the companyship, in this sort of earning two or more partners invest their money and share the profit.

As for the *muzar'at,* this means that the owner of the land rent out his land to a farmer and settle the matter on the distribution of the produce.

The above mentioned three sorts of investment are those through which one can earn profit without involving oneself in the work. For women the above mentioned three sorts of investment are fully open; she may invest her money in *muzarabat* and earn the profit; she is at full liberty to invest her money in a company or working group and procure the profit. The way of *muzar'at* is also open for her; she may lend her land to any tenant. She may also purchase the shares of a company.

The above mentioned rulings of the Islamic *shariat* establish it well that for women there exist various ways of economic struggle, employment and self employment, investment and earning profit. It is a mistaken view that in the Islam scheme of life women have no liberty of earning a livelihood. What Islamic prohibits women from is an uncalled for free mixing of men and women.

The restrictions have indeed augmented the possibilities of earning for women. There are fields which, thanks to these restrictions, have become exclusive or almost exclusive for women, the field of education and health for example. Women can avail of the opportunities available for them provided there exists separate system of education and vocational training for women and they learn and train themselves under the guidance of women instructors. Such separate educational and vocational training set up will require a large number of women teachers and instructors, thereby will expand the field of employment for them. Women's exclusive hospitals and health centers will, likewise, engender a greater number of employment for women. For such hospitals and health centers will require a large number of women doctors, physicians, nurses and other staff. The same is the case of other walks of life. In short, the fact is that the *purdah* restrictions are not a barrier to women's struggle for earning a livelihood. These restrictions will engender more opportunities instead.

Chapter Five

Women And Utilization of Their Properties And Possessions

Prior to the age of Islam, many religions and systems of law did not admit the right of woman to have the possession of something as its owner; woman herself was considered to be the property and possession of others. The Islamic teachings, contrariwise, make no difference between man and woman in as much as they are human beings. As man owns his properties and belongings, so does woman. Like men, women too enjoy fuller proprietary rights of their possession money and wealth and may spend or utilize their wealth as they wish, according to their discretion. On the proprietary rights of women the *Fuqaha* are unanimously agreed. Woman may sell her belonging, rent out them or utilize them in other beneficial ways.

About the woman who is married, has given birth to children or, at least, has lived for sometime with her husband there is a unanimity amongst the *fuqaha* that she is at liberty to make use of her possessions according to her wish and discretion. About the adult, unmarried woman, however, there are differences. Whether her *mal* could be entrusted to her and she may utilize it according to her will or not, and, after her marriage what will be the limits of her freedom to

utilize her *mal*; it is her freedom is limited to only trade activities for the sake of benefit or she may spend it for non-trade purposes as charity or gifting? About such questions there are two viewpoints among the *fuqaha*. The majority of the Hanafis, Shafie's and Hamablites makes no difference between an adult boy and girl and treats the both on equal footing. As the boy, whether married or unmarried, is considered able to proprietary rights, of taking his *mal* into his possession, of sale and purchase or of utilizing it and using it for his benefit and economic advantage, gifting his *mal* or give it in charity for the sake of reward from Allah *subhanahu wa ta'ala*, so does an adult girl before and after her marriage. To make use of her mal according to her discretion a married woman is not required to seek the permission from her husband.

Contrary to the majority view expressed above, the Malikites hold that the *mal* of the girl shall be entrusted to her after her becoming mother, or at least staying with her husband for years. Then, having taken into her possession she shall be at liberty to make use of her *mal* for business purposes or for the sake of economic advantage. She, however, will be allowed to spend her *mal* on unobligatory and non-profit making purposes only upto a one-third of her mal. In case she is desirous of gifting her mal or

giving it in charity beyond the limit of one third her husband's permission shall be required.[1]

Out of these two views the first one is obviously preferable, as the teachings of the Qur'an and *hadith* don't differentiate between man and woman in this regard and do not restrict the freedom of woman so far as the utilization of their *mal* by them is concerned. The Qur'an and hadith have related the act of *sadqah* to both men and women:

" والمتصدقين والمتصدقات . "

"And men and women who give in charity." [2]

Once, on the ocassion of the Ied prayer the Holy Prophet (SAWS) gave a word of admonition to his Companions and invited the women in particular to giving *sadqa*. H. Bilal spread his shawl. Heard the admonitian of the Prophet (SAWS), the women began to cast their ornaments and rings in Bilal's shawl.[3]

H. Zainab stated that the Holy Prophet (SAWS) once addressed us and, inviting us to do sadaqah, he said:

" تصدقن ولو□ن حليكن . "

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[1] See H. M. Anwar Wilayatul Mar'at fil Fiqhil Islami p. 588
[2] Al-Qur'an 33:35
[3] Bukhari, on the authority of Abdullah b. Abbas, Hadith No. 979

"O the women! Give *sadaqah* even if out of your ornaments."[1]

Asma the daughter of H. Abu Bakr (may Allah be pleased with them) narrated that, "Once the Prophet (SAWS) granted me a slave-girl. I sold her. Soon after my husband, Zubair b. Awwam, entered the house. At that time the price of the sold girl-slave was lying in my lap. He asked me to give the price to him. I replied that the money had already been given in charity.

"إني تصدقت بها ."

"I have already given it in charity."[2]

Once H. Asma (may Allah be pleasee with her) said to the Holy Prophet (SAWS), "I have nothing to give in *sadaqah* except what Zubair, may husband, gives me to meet the household expenses." The Prophet (SAWS) admonished her saying: O Asma! Give your *mal* in charity and cap not mouth of your purse, lest it be closed on you."[3]

Ummul Mominin H. Maimuna (may Allah be pleased with her) once, set free a girl-slave and mentioned her doing to the Holy Prophet (SAWS). The Prophet (SAWS) told her: Had you

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[1] Bukhari with fathul Bari, 3/325, Muslim 2/203 Hadith No. 1000, Musnad Ahmad 6/363 Hadith No. 27042

[2] Muslim with Nawavi Hadith No. 2182

[3] Bukhari, with Fathul Bari, Book of Zakat 3/301

gifted the girl-slave to your maternal uncles, it would have fetched you the reward greater still."[1]

There are *ahadith* which suggest that out of her husband's *mal* the wife may give in charity a socially acceptable quantity even without his consent and the husband too will share the reward with no decrease in her's as establishes the following narration:

"Ummul Muminin H. Ayisha (may Allah be pleased with her) stated that if a woman gave in charity out of her household expenses given to her by her husband, the act will fetch reward from Allah and the husband too will share the reward without causing any decrease to her reward.[2]

The above furnished discussion, supported by the *ahadith,* established it beyond doubt that, like adult men, the adult women too enjoy full proprietary rights; and there is no difference between the man and woman as far as the utilization, investment or other beneficial uses of the mal is concerned. For utilization of their properties and *mal* the married women need not seek permission from their husbands. Since women have less experience about people and the financial matters than man, they had better seek advice from their patrons-fathers and husbands, etc., before making investment or

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[1] Bukhari Book, Hiba Hadith No. 2590, Muslim, Book: Zakat Hadith No. 2318

[2] Bukhari with fathul Bari Book of Zakat 3/296 Hadith No. 1440

utilizing their *mal* for earning financial benefits. Thus the women may better secure their interests and ward off the possible harms. The Maliki stand point too is not intended to restrict the freedom of women in financial matters. It is meant to secure women's interests in a more reliable way instead.